# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 19145

No. 463. 138

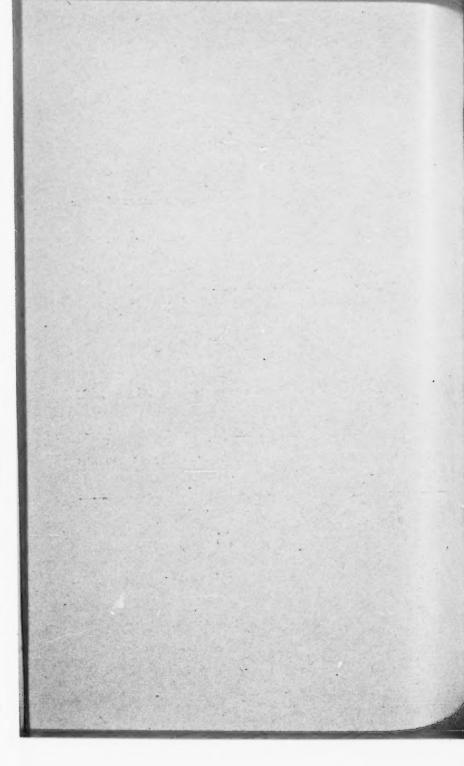
THE UNITED STATES, APPELLANT,

VS.

W. J. MORRISON, FINLEY MORRISON, AND THE SLIGH FURNITURE COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT.

FILED MAY 1, 1914.



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No. 2295.

a

In the United States Circuit Court of Appeals, Ninth Circuit.

W. J. Morrison, Finley Morrison, and Slight Furniture Company, a corporation, appellants,

18.

THE UNITED STATES OF AMERICA, APPELLEE,

Upon appeal from the District Court of the United States for the District of Oregon.

Transcript of record.

b In the United States Circuit Court of Appeals, Ninth Circuit.

W. J. Morrison, Finley Morrison, and Sligh Furniture Company, a corporation, appellants,

7.8.

THE UNITED STATES OF AMERICA, APPELLEE.

Names and addresses of attorneys upon this appeal: For the appellants: R. Sleight, Yeon Bldg., Portland, Oreg.

For the appellee: C. L. Reames, U. S. Atty., Portland, Ore.
In the District Court of the United States for the District of Oregon.

Be it remembered that on the 24 day of November, 1911, there was duly filed in the Circuit Court of the United States for the District of Oregon a bill of complaint, in words and figures as follows, to wit:

Bill of complaint.

In the Circuit Court of the United States for the District of Oregon

UNITED STATES OF AMERICA, PLAINTIFF,

18.

E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and The Sligh Furriture Company, a corporation, defendants.

To the Honorable Judges of the Circuit Court of the United States for the District of Oregon, Ninth Judicial District, Sitting in Equity:

Comes now the United States of America, by Robert F. Maguire, its assistant United States attorney for the District of Oregon, in this behalf duly authorized and directed by the Attorney General of the United States, and brings this its bill against E. J. Cowlishaw, a

citizen and resident of the State of Oregon, W. J. Morrison, a citizen and resident of the State of Oregon, Finley Morrison, a citizen and resident of the State of Oregon, and The Sligh Furniture Company, a corporation incorporated under and by virtue of

the laws of the State of Michigan, and a citizen and resident of said State, and shows unto your honors as follows:

T.

The southwest quarter, the northwest quarter, the south half of the northeast quarter (S. ½ NE. ½), and the southeast quarter (SE. ½), all of section sixteen (16), township three (3) south, range six (6) east of the Williamette Meridian, and each and every parcel thereof, are and have at all times been a part and parcel of the public domain of the plaintiff.

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On, to wit, the 16th day of December, 1905, the Secretary of the Interior by proclamation withdrew temporarily from entry, settlement, sale, or other disposal, except under the mining laws of the United States, all of said lands, together with large quantities of other lands of plaintiffs' public domain contiguous to and in the vicinity thereof, for forest purposes.

# III.

On the 25th day of January, 1907, the President of the United States, acting under and by virtue of the power vested in him by law, by Executive proclamation established the Cascade Range Forest Reserve, Oregon, and included therein by said Executive proclamation each and every part, portion, and parcel of said lands.

#### IV.

On January 2, 1902, a field survey of said land was made;
but said survey was not accepted and approved by the Commissioner of the General Land Office of the United States until January 31, 1906, and at all times prior to the said 31st day of January, 1906, the said lands were unsurveyed public lands of the plaintiff and part of its public domain.

#### V.

The plaintiff, the United States of America, claims and holds the title in fee to each and every of said parcels of land.

## VI.

The defendant, E. J. Cowlishaw, claims an interest and estate in the southwest quarter (SW. 4) of section sixteen (16), township three (3) south, range six (6) east Willamette meridian, of said lands, under, through, and by virtue of a pretended certificate and contract from the State of Oregon, described as follows, certificate No. 15210, dated January 8, 1907; and which said pretended claim, estate, and interest is without any right whatsoever, and the defendant E. J. Cowlishaw has no estate, right, title, or interest whatsoever in said land or in said premises or any part thereof.

## VII.

The defendants Finley Morrison and W. J. Morrison claim an estate and interest in the southeast quarter (SE. 4) of section sixteen (16), township three (3) south, range six (6) east Willamette meridian, under, through, and by virtue of a deed executed by Robert F. Louden, which said deed is of date the 10th day of October, 1906, and pretends to convey to the said defendants

last above named the southeast quarter (SE. 4) of said section sixteen (16) in said township and range, which said pretended claim, estate, and interest is without any right whatsoever, and the defendants Finley Morrison and W. J. Morrison have not and neither of them have any estate, right, title, or interest in said lands or premises or any part thereof.

#### VIII.

The defendants Finley Morrison and W. J. Morrison claim an estate and interest in the south half of the northeast quarter (S. ½ NE. ¼) and the northwest quarter of the northwest quarter (NW. ¼ NW. ¼) of section sixteen (16), township three (3) south, range six ((6) east Willamette meridian, under and through a deed executed by Alvira S. Louden, of date January 9, 1907, which said deed pretended to convey the said lands thereof to the said Finley Morrison and W. J. Morrison, and which said pretended claim, estate, and interest is without any right whatsoever, and the defendants Finley Morrison and W. J. Morrison have not and neither of them have any estate, right, title, or interest whatsoever in said land or premises or any part thereof.

#### IX.

The defendants Finley Morrison and W. J. Morrison claim an estate and interest in the south half of the northwest quarter (S. ½ XW. ‡) and the northeast quarter of the northwest quarter (NE. ‡ XW. ‡) of section sixteen (16) in township three (3) south, range six (6) east of the Willamette meridian, under, through, and by virtue of a deed executed by Charles E. Powell, of date January 15, 1910, which said deed pretended to convey the said lands to the said Finley Morrison and W. J. Morrison, and which said pretended claim, estate, and interest is without any

right whatsoever, and the defendants Finley Morrison and W. J. Morrison have not and neither of them have any estate, right title, or interest in or to any part of the said lands last above described.

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The Sligh Furniture Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, claims an estate and interest in the northwest quarter of the northwest quarter (NW. 4 NW. 4) and the south half of the northeast quarter (S. ½ NE. 4), and the southeast quarter (SE. 4), all of section sixteen (16), township three (3) south, range six (6) east Willamette meridian, through and under a deed executed by Finley and W. J. Morrison of date July 12, 1910, which said deed pretended to convey to the said The Sligh Furniture Company the lands last above described, and which said pretended claim, estate, and interest is without any right whatsoever, and the defendant, The Sligh Furniture Company, has not any estate, right, title, or interest in the said lands or premises or any part or parcel thereof.

## XI.

The act of Congress approved February 14, 1859, provides in part that—

6 "Sections 16 and 36 of every township of public lands in said State (Oregon), and where either of said sections or any part thereof has been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools."

#### XII.

The defendants and each and every one of them derive their claim or right, title, interest, and estate in said lands, under and by virtue of the provisions of the act of Congress hereinbefore recited, directly or by mesne conveyances, from the State of Oregon, and said claims and each and every of them is without any right whatsoever, for the reason that the said lands having been withdrawn from settlement, entry, sale, or other disposal except under the mineral laws of the United States, before and prior to the survey of the same as hereinbefore set forth, no right, title, interest, or estate in said lands ever or at all vested in the said State of Oregon.

To the end, therefore, that your plaintiff may have that relief which can only be obtained in a court of equity and in this court having jurisdiction under the aforesaid facts, and that the defendants may answer the premises and show, if they can, why plaintiff should not have the relief herein prayed for, your plaintiff prays and requests of your honors to grant your plaintiff a writ of subpœna to be

directed to the said defendants, commanding them at a certain time and under a certain penalty therein to be timited, personally to appear before this honorable court and then and there full, true, direct, and perfect answer make (but not under oath, the benefit whereof is hereby expressly waived) to all and singular the premises, and to stand, perform, and abide by such order, direction, and decree as may be made against them or either of them in the premises as to your honors shall seem meet and agreeable to equity, and that your honors may decree that the title of the plaintiff in and to the said lands, and each and every part, portion, and parcel thereof, is good and valid; that the defendants and each and every of them have no right, title, interest, or estate therein to the said lands or any part, portion, or parcel thereof: that the contracts of sale, certificates, deeds, and other conveyances and muniments of title, under, through, and by virtue of which the said defendants and each of them claim any estate, right, title, or interest in said lands, be cancelled, vacated, and held for naught, and that the defendants and each of them be forever enjoined and debarred from asserting any claim whatsoever in or to the said lands or any part, portion, or parcel thereof, adversely to the plaintiff, and for such relief as to your honors shall seem meet and agreeable to equity and for its costs and disbursements.

> Robert F. Maguire, Assistant United States Attorney for the District of Oregon.

UNITED STATES OF AMERICA.

District of Oregon, 88:

I, Robert F. Maguire, being first duly sworn, on oath depose and say that I am assistant United States attorney for the district of Oregon and that the facts set forth in the foregoing bill of complaint are true as I verily believe; that I base this affidavit upon the record in said cause as is furnished and delivered to me by the Department of Agriculture and by authority and under the direction of the Attorney General of the United States.

Robert F. Maguire.

Assistant United States Attorney
for the District of Oregon.

Subscribed and sworn to before me this 23d day of November, 1911.

[L. S.]

F. L. Buck,

Notary Public for Oregon.

(Indorsed:) Bill of complaint. Filed November 24, 1911.

G. H. Marsh, Clerk.

And afterwards, to wit, on the 5 day of January, 1913, there was duly filed in said court an amended answer in words and figures as follows, to wit:

# Amended answer.

In the Circuit Court of the United States for the District of Oregon.

· United States of America, Plaintiff,

1'8.

E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a corporation, defendants.

9 The joint and several amended answer of W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a corporation, to the bill of complaint of the above named plaintiff respectfully shows as follows:

I.

Answering Paragraph I of said bill of complaint, these defendants deny that the lands therein described are or were at any of the times mentioned in the bill of complaint a part of the public domain of the United States.

II.

Answering Paragraph II of said bill of complaint, these defendants admit that on the 16th day of December, 1905, the Secretary of the Interior, by proclamation, temporarily withdrew from entry, settlement, sale, or other disposal, except under the mining laws of the United States, all of the lands described in Paragraph I of the bill of complaint, together with other lands belonging to the plaintiff, for forest purposes; but allege that such withdrawal was subject to the rights acquired by these defendants in the lands claimed by them as hereinafter set forth, and also was by the terms of the proclamation or order withdrawn by description according to the subdivisions of the survey hereinafter mentioned.

#### III.

Answering Paragraph III of the bill of complaint, these defendants admit that on the 25th day of January, 1907, the President of the United States, by Executive proclamation, established the 10—Cascade Range Forest Reserve in Oregon and included therein the lands described in said bill of complaint: but allege that, in so far as the lands claimed by these defendants is concerned, which lands are hereinafter particularly described, the same was subject to the rights acquired by these defendants from the State of Oregon as hereinafter set forth.

#### IV.

Answering Paragraph IV of said bill of complaint, these defendants admit that on January 2, 1902, a field survey of the lands described in the bill of complaint, including the lands claimed by these

defendants as hereinafter described, was made, and that said survey was accepted by the Commissioner of the General Land Office on January 31, 1906; but deny that prior to said last mentioned date the said lands, or any part thereof, were unsurveyed lands, or were public lands belonging to the United States, or a part of the public domain, and allege that the said lands had been acquired by these defendants from the State of Oregon as hereinafter described.

# 1.

Answering Paragraph V of the bill of complaint, these defendants deny that the United States holds the title to the lands described in the complaint, including the lands claimed by these defendants as hereinafter described, and allege that the title to said lands last mentioned is now in the defendant The Sligh Furniture Company, which title was derived as hereinafter set forth.

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Answering paragraph VI of the bill of complaint as to the claim of the defendant E. J. Cowlishaw to the southwest quarter of section sixteen these defendants have no knowledge or information thereof sufficient to form a belief, and these defendants disclaim any interest in said southwest quarter of section sixteen in township three south of range six east of Willamette meridian.

#### VII.

Answering paragraph VII of said bill of complaint these defendants admit that the defendants Finley Morrison and W. J. Morrison acquired an estate and interest in the southeast quarter of section sixteen, township three south of range six cast of Willamette meridian, under color of title from Robert E. Loudon, which interest was subsequently conveyed to the Sligh Furniture Company as is hereinafter more particularly set forth, and these defendants deny that the said claim is without any right, and deny that they have not a good title thereto.

#### VIII.

Answering paragraph VIII of said bill of complaint these defendants admit that the defendants Finley Morrison and W. J. Morrison claim an estate and interest in the south half of the northeast quarter and the northwest quarter of the northwest quarter of said section sixteen in township three south of range six east of Willamette meridian under color of title acquired through Alvira S. Loudan, as is hereinafter more particularly set forth, and deny that the claim and estate is without any right, and deny that said defendants Finley Morrison and W. J. Morrison have not good title thereto.

## IX.

Answering paragraph IX of said bill of complaint these defendants and each of them do not claim and never have claimed to have any right, interest, or estate in the south half of the northwest quarter or in the northeast quarter of the northwest quarter of section sixteen in township three south of range six east of Willamette meridian embraced in said paragraph IX of the bill of complaint, and they disclaim any interest therein.

#### X

Answering paragraph X of said bill of complaint these defendants admit that the Sligh Furniture Company, the defendant corporation above named, is organized under the laws of the State of Michigan and admit that it claims an interest and estate in the northwest quarter of the northwest quarter and the south half of the northeast quarter and the entire southeast quarter of said section sixteen in township three south of range six east of Willamette meridian, which estate is derived through the said Finley Morrison and W. J. Morrison from the State of Oregon as hereinafter more particularly set forth, and deny that said estate and interest is without any right, and deny that the said Sligh Furniture Company has not any title to said lands or any part thereof.

# 13 XI.

Answering paragraph XI of said bill of complaint these defendants admit that the act of Congress approved February 14, 1859, provided as set forth in paragraph XI.

## XII.

Answering paragraph XII of said bill of complaint these defendants admit that as to all of the lands particularly described above, except those to which they disclaim any title, they derived their claim of title directly or by mesne conveyances from the State of Oregon, and deny that said claims or any of them are without right, and deny that said lands have been withdrawn from settlement, entry, sale, or other disposal except under the mineral laws of the United States before or prior to the survey of the same, but allege that said withdrawal was subject to the title of the State of Oregon theretofore acquired as hereinafter set forth.

#### XIII.

Further answering said bill of complaint these defendants allege and show to the court that the said section sixteen in township three south of range six east of Willamette meridian was granted to the State of Oregon by the United States by the terms of the act of Congress approved February 14, 1859, for the use of schools, which grant was duly accepted by the State of Oregon by act of the legislative assembly of the State of Oregon approved June 3, 1859.

## XIV.

That on January 2, 1902, a field survey of said section sixteen was made under the direction of the surveyor general of the State of Oregon in conformity with the laws of the United States, which survey was duly approved by said surveyor general of the State of Oregon on the 2d day of June, 1903, and plats thereof were duly filed as provided by law. That the plat of said survey as approved by the surveyor general was accepted by the commissioner of the General Land Office on the 31st day of January, 1906, without any correction or change of any kind and in exactly the same form as approved by said surveyor general.

# XV.

That on the 16th day of December, 1905, by an order of the Secretary of the Interior the vacant and unappropriated land in said section sixteen was temporarily withdrawn from all disposal except under the mining laws. That on December 19, 1905, a telegram was sent by the Commissioner of the General Land Office to the register and receiver at Portland, Oregon, informing them of said withdrawal and stating that the land had been withdrawn for forestry purposes, and on December 19, 1905, a letter was sent by the commissioner to the register and receiver giving them the same information. That the said withdrawal so made by said Secretary and commissioner described said lands by Government subdivision according to the rectangular system of Government survey, and were based on said survey approved by the surveyor general of Oregon as aforesaid.

15 XVI.

On January 25, 1907, the President of the United States issued a proclamation enlarging the Cascade Range Forest Reserve to include certain additional lands, which included the said section sixteen, but excepting from the force and effect of said proclamation all lands which at said date were embraced in any withdrawal or reservation for any use or purpose to which said reservation for forest uses is inconsistent. That the said withdrawal and proclamation was inconsistent with the use of the said lands for school land by the State of Oregon and inconsistent with the grant of said lands to the State of Oregon for said uses theretofore made as above set forth, and was inconsistent with the reservation of said lands for said uses as embraced in and covered by said grant. That the said proclamation and withdrawal by the department are the proclamation and withdrawal mentioned in the bill of complaint.

#### XVII.

That by virtue of the said grant of section sixteen to the State of Oregon and by virtue of the said survey of said lands in the field and the approval thereof by the Surveyor General and the filing and approval thereof as hereinbefore set forth, the title to said lands vested in the State of Oregon beyond the power of the department or of the President or of Congress to interfere with or deprive the State of the same, and the State of Oregon acquired the full right of disposal of said lands thereby.

16 XVIII.

That on the 10th day of October, 1906, the State of Oregon, in pursuance of the law of said State for the disposal of said lands, executed and delivered a certificate of sale to the southeast quarter of said section sixteen to Robert F. Louden, and executed and delivered a certificate of sale of the south half of the northeast quarter and the northwest quarter of the northwest quarter of said section sixteen to Alvira S. Louden: and the said Robert F. Louden and Alvira S. Louden thereafter duly assigned and transferred said certificate of sale to the defendants Finley Morrison and W. J. Morrison, and on the 9th day of January, 1907, the said Finley Morrison and W. J. Morrison duly surrendered said certificates to the State of Oregon in conformity with law, and the State of Oregon on said last-mentioned date, by its proper officers, duly executed and delivered to said Finley Morrison and W. J. Morrison a deed of conveyance whereby it granted to them the southeast quarter and the south half of the northeast quarter and the northwest quarter of the northwest quarter of said section sixteen in township three south of range six east of Willamette meridian, subject to right of way for ditches, canals and reservoir sites for irrigation purposes constructed, or which may be constructed, by authority of the United States; and said defendants Finley Morrison and W. J. Morrison thereby acquired a fee simple title to said real estate and became the owners thereof.

said deed was duly recorded in the office of the recorder of deeds for Clackamas County, Oregon, which is the county in which said lands are situated, on the 26th day of January, 1907, and was also recorded in book 32 of State deed records at Salem, Oregon, on page 420.

## XIX.

That thereafter, to wit, on the 12th day of July, 1910, the said Finley Morrison and W. J. Morrison and their wives, by deed, duly granted and conveyed the said last-described lands to the Sligh Furniture Company, a corporation, which deed was recorded in the recorder's office for Clackamas County, Oregon, on the 3d day of August, 1910, and said Sligh Furniture Company thereby be-

came the owner of said lands in fee simple, and is now the owner thereof.

Wherefore these defendants pray that this suit may be dismissed and that they have and recover their costs and disbursements herein.

R. SLEIGHT.

Attorney for defendants Finley Morrison, W. J. Morrison, and Sligh Furniture Company.

(Endorsed:) Amended answer of defendants W. J. Morrison, Finley Morrison, and Sligh Furniture Co. Filed Jan. 5, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 20 day of January, 1912, there was duly filed in said court, a replication, in words and figures, as follows, to wit:

18 Replication.

In the District Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA, PLAINTIFF,

vs.

E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a corporation, defendants.

Replication of the plaintiff in the above-entitled cause to the answer of the defendants W. J. Morrison, Finley Morrison, and the Sligh Furniture Company.

Comes now the United States of America, plaintiff in the above cause, and replying to the answer filed herein says that, saving and reserving all manner of exceptions to the insufficiency of the answer, for replication thereto doth say that this bill is true and sufficient as averred, and that he is ready to prove it, and that the answer of the defendant is untrue and insufficient.

Wherefore he prays relief as set forth in his original bill.

ROBERT F. MAGUIRE,

Solicitor.

(Endorsed:) Replication. Filed Jan. 20, 1912.

A. M. CANNON, Clerk U. S. District Court.

And afterwards, to wit, on the 13 day of January, 1913, there was duly filed in said court, an opinion, in words and figures as follows, to wit:

No. 3866.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF,

78.

E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and The Sligh Furniture Company (a corporation) defendants.

John McCourt, United States attorney.

Robert F. Maguire, assistant United States attorney.

R. Sleight for defendants.

Wolverton, District Judge: This is a suit to quiet the title to certain lands in the plaintiff against the claim of ownership and right to possession of the defendants. The lands are a part of school section No. 16, in township 3 south, range 6 east of the Willimette meridian. The facts as stipulated by counsel are as follows:

Prior to May 27, 1902, the lands were unsurveyed lands of the United States. On that date a field survey of the east boundary of said lands was made, and on June 2nd the north, west, and south boundaries were surveyed and section 16 subdivided according to the rules of the land office in surveying the lands of the Government. This field survey was approved by the United States surveyor general of the State of Oregon June 2, 1903, and on June 8th

that officer transmitted copies of the plat of survey and field 20 notes to the Commissioner of the General Land Office at Washington, D. C., and the survey was accepted by the commissioner January 31, 1906. On November 16, 1907, the commissioner directed the surveyor general to place a plat of the survey in the field in the local land office of the United States at Portland, Oregon. which was on the same date accordingly filed in that office. On December 16, 1905, the Secretary of the Interior, by order, temporarily withdrew for forestry purposes, from all forms of disposition whatsoever except under the mineral laws of the United States, all vacant and unappropriated public lands within a certain specifically described area including said township 3 south, range 6 east, W. M., and the local land office was duly notified of such order. On January 25, 1907, the President of the United States issued a proclamation enlarging the Cascade Range Forest Reserve to include such lands, which, among other things, provided that all lands which at said date were embraced within any withdrawal or reservation for any use or purpose to which said reservation for forest uses was incomsistent were excepted from the force and effect of such proclamation.

On October 10, 1906, the State of Oregon, in pursuance of the laws for the disposal of lands owned by it, executed a certificate of sale to Robert F. Louden for the southeast quarter of said section 16. and to Alvina S. Louden a certificate for the south half of the northeast quarter and the northwest quarter of the northwest quarter of said section; and they thereafter assigned and transferred said certificates of sale to Finley and W. J. Morrison. On January 9, 1907, the State of Oregon, on surrender of the certificates of sale, executed to these latter purchasers a deed granting

tificates of sale, executed to these latter purchasers a deed granting and conveying to them the lands described. On July 12, 1910, Finley and W. J. Morrison conveyed to the defendant Sligh Furniture

Company.

Under the facts as thus stipulated it is claimed by the Government that at the time the State exercised authority to sell and dispose of such lands they were not school lands, but were the property of the Government, and not subject to sale by the State. The defendants controvert this position and claim to have acquired the fee simple title in regular course. The question thus presented depends upon the proper construction of the clause in the enabling act of Congress for the admission of the State of Oregon into the Union, approved February 14, 1859, pertaining to school lands, which reads as follows:

"That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be

granted to said State for the use of schools."

The grant was accepted by the legislative assembly of the State June 3, 1859. The language of the act is "shall be granted." This has never been construed, that I am aware of, as a grant in presenti.

but it rather looks to the future, as depending on some future act or event, and as not to become effective until such act or event has taken place or happened. It is manifest that the act is not a grant of all sections 16 and 36 within the territorial limits of the State, for it provides that if such sections, or any part thereof, have been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted. This again raises the inquiry as to when the grant is to become effective as an actual transfer of the lands to the State. As to the lands to be granted in the place of the school sections, or any part thereof, sold or otherwise disposed of, it is very plain that there could be no passing of title until they were identified by some approved method of selection from the public domain. In construing a similar statute—the enabling act of the State of Nevada, which employed the words "shall be and are hereby granted"—the Supreme Court was led to observe that:

"Her people were not interested in getting the identical sections 16 and 36 in every township. Indeed, it could not be known until after a survey where they would fall, and a grant of quantity put her in as good a condition as the other States which had received the lenefit of this bounty. A grant, operating at once, and attaching

prior to the surveys by the United States, would deprive Congress of the power of disposing of any part of the lands in Nevada until they were segregated from those granted." Heydenfeldt v. Daney Gold.

etc., Co., 93 U. S., 634, 638.

In that case the State of Nevada issued a patent to plaintiff's 23 predecessor July 14, 1868. The defendant claimed under a patent from the United States issued March 2, 1874, under the act of Congress of July 26, 1866, as amended by an act approved July 9, 1870, and the act of May 10, 1872, relating to the development of the mining resources of the United States. The land in controversy was mineral land, and the defendant's grantors and predecessors had entered upon the same for mining purposes in 1867, prior to the survey or approval of the survey of the school section in which it was located, and had claimed the same in conformity with the laws and customs of miners in that locality. The enabling act for the admission of the State into the Union was adopted March 21, 1864. So it appears that in case that the land in dispute was entered upon for mining purposes subsequent to the adoption of the enabling act, at a time prior to a survey of the school section. but before the grant by the State to plaintiff's predecessor, and the question was fairly presented whether the title passed to the State at the time of its admission into the Union, or at some future time, namely, the time of its identification in place by a proper survey. And it was held that "until the status of the lands was fixed by a survey, and they were capable of identification, Congress reserved absolute power over them; and if in exercising it the whole or any part of a 16th or 36th section had been disposed of, the State was to be compensated by other lands equal in quantity and as near as may be in quality."

In an earlier case it was said, the court speaking with reference to the enabling act of the State of Michigan, almost

identical in language with that of Oregon:

"We agree, that until the survey of the township and the designation of the specific section, the right of the State rests in compact—binding, it is true, the public faith, and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. But when the political authorities have performed this duty, the compact has an object, upon which it can attach, and if there is no legal impediment the title of the State becomes a legal title. The just ad rem by the performance of that executive act becomes a just in re, judicial in its nature, and under the cognizance and protection of the judicial authorities, as well as the others." Cooper v. Roberts, 18 How., 173, 179.

In a later case, Minnesota v. Hitchcock, 185 U. S., 373, the court treated of the significance of the words "public lands," and quoted as authoritative the language of the court in Hewhall v. Sanger,

92 U. S., 761, 763, as follows:

"The words 'public lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws."

It then, after citing other authorities bearing upon the subject, proceeded to say:

"Again, the language of the section" (referring to the Minnesota enabling act, identical with that of Oregon as to the grant of school lands) "does not imply a grant in praesenti. It is 'shall be granted.' Doubtless under that promise whenever lands became public lands they came within the scope of the grant."

Later the court further commented:

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"But while this is true, it is also true that Congress does not, by the section making the school-land grant, either in letter or spirit, bind itself to remove all burdens which may rest upon lands belonging to the Government within the State, or to transform all from their existing status to that of public lands, strictly so called, in order that the school grant may operate upon the sections named. It is, of course, to be presumed that Congress will act in good faith; that it will not attempt to impair the scope of the school grant; that it intends that the State shall receive the particular sections or their equivalent in aid of its public-school system. But considerations may arise which will justify an appropriation of a body of lands within the State to other purposes, and if those lands have never become public lands the power of Congress to deal with them is not restricted by the school grant, and the State must seek relief in the clause which give it equivalent sections."

This was followed further in the opinion by a citation of the Heydenfeldt case, indicating its holding, namely, "that the United States had full power to dispose of the land until after a survey and the identification thereby." Then, after referring to a joint resolution adopted by Congress on March 3, 1857, prompted by a memorial from the Territory of Minnesota, the court concluded that:

"The act of admission with its clause in respect to school lands was not a promise by Congress that under all circumstances, either then or in the future, these specific school sections were should become the property of the State. The possibility of other disposition was contemplated, the right of Congress to make it was accognized, and provision made for a selection of other lands in lieu thereof."

It would seem to be a logical deduction from these authorities, therefore, that the grant of the school sections does not vest the title thereof in the State until they have become identified through a survey determining their location. In further support of this view see also Hibberd v. Slack, 84 Fed., 571, and State of Oregon, L. D., lecided July 5, 1912.

As to the case of Beecher v. Wetherby, 95 U. S., 517, there may be found expressions in the opinion seemingly opposed to this view, but the case itself does not appear to have been so considered by the

Supreme Court in the Hitchcock case, although commented upon at some length. Furthermore, the case was decided subsequent to the Heydenfeldt case, with but a year intervening, and although cited in the briefs of counsel it was not referred to in the opinion of the court, so that we can not infer that it was the intention to overrule that case.

The next question presented is whether a survey in the field is sufficient to meet the requirements of an identification of school sections by survey. That the land department has authority to make

rules and regulations, subject to law, in all matters pertaining to the disposition of public lands, will not be questioned. And it is said that, "From the earliest days matters appertaining to the survey of public or private lands have devolved upon the Commissioner of the General Land Office, under the supervision of the Secretary of the Interior." Citing Rev. Stat., sec. 453. Cragin v. Powell, 128 U. S., 691, 697. See also Knight v. U. S. Land Association, 142 U. S., 161, 177.

In the exercise of this power the Land Department, on April 17, 1879, issued instructions to the surveyors general that they should not file the duplicate plats in the local land offices until the duplicates had been examined in the General Land Office and approved, and the surveyors general officially notified of that fact. Since such regulation it has been held by the Secretary of the Interior, and it has become the practice of the Land Department that public lands are not to be deemed surveyed or identified until approval of the plat of survey and filing thereof by direction of the Commissioner of the General Land Office in the local land office. F. A. Hyde & Co., 37 L. D., 164, 165.

This ruling has been specifically reaffirmed in a later case. Anderson v. State of Minnesota, 37 L. D., 390, 392. See also State of Oregon, L. D., 259, supra.

The Land Department having adopted such a rule under clear authority of law, and having so interpreted it, and it having the stamp of reason and sound policy, there is little left for the courts to do but to apply it.

to do but to apply it.

In the case at bar the stipulation shows that, measured by this rule, there was no survey or proper identification of school section No. 16, township 3 south, 6 east, at the time the land was incorporated into the Cascade Reserve through withdrawal by the commissioner, followed later by the proclamation of the President. Nor do I think that the lands in dispute were excepted from the operation of the proclamation.

The plaintiff is entitled to the relief as prayed, and it is so ordered (Endorsed:) Opinion. Filed Jan. 13, 1913.

A. M. CANNON, Clerk U. S. District Court.

And afterwards, to wit, on the 17 day of March, 1913, there was duly filed in said court a decree, in words and figures as follows, to wit:

#### Decree.

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In the District Court of the United States for the District of Oregon.

No. 3866.

United States of America, plaintiff,

E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and the Slight Furniture Company, a corporation, defendants.

This cause came on to be heard and was argued by counsel appearing for the plaintiff and the defendants, W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a corporation, a statement of facts having been agreed upon by the parties plaintiff and defendant, by their respective counsel, and filed herein:

And it appearing to the court that a subpœna in the above entitled cause was duly issued and served on E. J. Cowlishaw, defendant herein, and that no appearance has been entered by the said E. J. Cowlishaw, and that an order taking the bill as confessed was duly entered in the order book on the 6th day of February, 1913, in the office of the clerk of the court, and no proceeding has been taken by the said defendant, E. J. Cowlishaw, since the entry of said order, and more than thirty days have elapsed since entering the order procentesso against the said E. J. Cowlishaw:

Whereupon, upon consideration thereof, it is

Ordered, adjudged, and decreed that plaintiff is entitled to the

relief as prayed in its bill of complaint, viz:

That plaintiff's title to the southwest quarter (SW. 1), and the northwest quarter (NW. 1), and the south half (S. 1) of the northeast quarter (NE. 1), and the southeast quarter (SE. 1) of section sixteen (16), township three (3) south, range six (6) east of the

Willamette meridian, in the State of Oregon, and to every part and parcel thereof, is good and valid: that the defendants, E. J. Cowlishaw, W. J. Merrison, Finley Morrison, and The Sligh Furniture Company, a corporation, and each and every of them, have no right, title, interest, or estate therein to the said lands or any part, portion, or parcel thereof: that the contracts of sale, certificates, deeds, and other conveyances and muniments of title, under, through, and by virtue of which the said defendants and each of them claim any estate, right, title, or interest in said lands, be cancelled, vacated, and held for naught, and that the defendants, and each of them, be forever enjoined and debarred from asserting any claim whatsoever in or to said lands, or any part, portion, or parcel thereof, adversely to the plaintiff: and.

It is further ordered and adjudged that the complainant herein recover its costs and disbursements in this suit, of and from the

defendants, taxed at \$78.68.

Done and dated at Portland, Oregon, this 15 day of March, 1913. CHAS. E. WOLVERTON,

Judge.

(Endorsed): Decree. Filed March 17, 1913.

A. M. CANNON, Clerk U. S. District Court.

And afterwards, to wit, on the 30 day of April, 1912, there was duly filed in said court a stipulation of facts, in words and figures as follows, to wit:

31

Stipulation of facts.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF,

E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a corporation, defendants.

It is hereby stipulated by and between the above-named plaintiff and the defendants, W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, that the following statements of facts is hereby admitted to be true for the purposes of all trials of this action, and of any and all appeals or other proceedings herein no proof need be offered or produced by either of said parties upon such trial or appeal as to any of said facts, but the court shall be at liberty to draw the same inference therefrom which might be drawn from the same facts if they were established by evidence.

It is further stipulated that either of said parties shall have the right to object to the competency, relevancy, or materiality of any of the facts herein stipulated or any part thereof. And either of said parties shall also have the right to introduce and offer testimony or proof, in addition to the facts herein stipulated and not

inconsistent with this stipulation.

32

T.

That the above-named defendants, W. J. Morrison and Finley Morrison, are citizens and residents of the State of Oregon, and the Sligh Furniture Company is a corporation organized and existing under the laws of the State of Michigan and a citizen and resident of Michigan.

II.

The act of Congress approved February 14, 1859, provides in

part that: "Sections 16 and 36 of every township of public lands in said State (Oregon), and where either of said sections or any part thereof has been sold or otherwise disposed of, other lands equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools."

Said act and grant was accepted by the State of Oregon by the act of the legislative assembly of that State, approved June 3, 1859.

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Prior to the 27th day of May, 1902, no survey of any kind had been made by the United States of the lands which are the subject of this suit. On the 27th of said lands was made under the direction of the United States surveyor general of the State of Oregen, and on the 2d day of June, 1902, a field survey, under the direction of the same official, was made of the north, west, and south boundaries and the subdivisions of said lands, and, according to the terms of the said field survey, the lands which are the subject of this suit were and are described as section sixteen (16) in township three (3) south, range six (6) east of the Willamette meridian; that said field survey was approved by the United States surveyor general for the State of Oregon on the 2d day of June, 1903, and that on the 8th day of June, 1903, the said surveyor general transmitted copies of the plat of survey and field notes to the Commissioner of the General Land Office, Washington, D. C.: the said survey was accepted by the Commissioner of the General Land Office on the 31st day of January, 1906. On November 16, 1907, the Commissioner of the General Land Office directed the said surveyor general to place a plat of the said survey in the field in the local land office of the United States at Portland, Oregon; that said survey was accepted by the Commissioner of the General Land Office on January 31, 1906, and was filed in the local land office of the United States at Portland, Oregon, on the 16th day of November, 1907, in substantially the same form in which the same was accepted by the said surveyor general, without change or correction thereof.

IV.

That on the 16th day of December, 1905, the Secretary of the Interior, by an order of that date, temporarily withdrew for forestry purposes from all forms of disposition whatsoever, except under the mineral laws of the United States, all the vacant and unappropriated public lands within the areas specifically described in that cer34 tain letter of the Commissioner of the General Land Office, of date December 12, 1905, to the Secretary of the Interior, induding all of township three (3) south, range six (6) east of the Willamette meridian. In December, 1905, a telegram was sent by the Commissioner of the General Land Office to the register and receiver of the United States land office at Portland, Oregon, informing him of said withdrawal and stating that the land had been withdrawn for forestry purposes, and on December 19, 1905, a letter was sent by the said commissioner to the register and receiver giving him

the same information, copies of which said letters, orders, and telegrams are hereby attached, hereby made a part hereof, and marked "Exhibit A"; that the said withdrawal so made by the Secretary of the Interior and the Commissioner of the General Land Office described said lands according to the rectangular system of Government survey.

V

On January 25, 1907, the President of the United States issued a proclamation enlarging the Cascade Range Forest Reserve to include said lands in addition to those theretofore embraced in said reserve, which enlargement included the said section sixten (16); that by said proclamation it was provided that all lands which at said date were embraced in any withdrawal or reservation for any use or purpose to which said reservation for forest uses was inconsistent were excepted from the force and effect of said proclamation.

That the said preclamation and withdrawal is the preclamation and withdrawal mentioned in the bill of complaint and the amended answer of the defendants, W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a copy of which said proclamation is hereto attached and hereby made a part hereof and marked "Exhibit B."

VI.

That on the 10th day of October, 1906, in pursuance of the laws of Oregon providing for the disposal of lands owned by said State, the State of Oregon executed and delivered a certificate of sale of the southeast quarter of said section sixteen (16) to Robert F. Louden, and executed and delivered a similar certificate of sale of the south half of the northeast quarter and the northwest quarter of the northwest quarter of said section sixteen (16) to Alvina S. Louden, and the said Robert L. Louden and Alvina S. Louden thereafter duly assigned and transferred said certificates of sale to the defendants, Finley and W. J. Morrison and on the 9th day of January. 1907, the said Finley Morrison and W. J. Morrison surrendered said certificates to the State of Oregon in conformity with law, and the State of Oregon on said last mentioned date, by its proper officers, executed and delivered to the said Finley Morrison and W. J. Morrison a deed of conveyance whereby it granted and conveyed to them the southeast quarter and the south half of the northeast quarter and the northwest quarter of the northwest quarter, of said section sixteen (16) in township three (3) south, range six (6) east.

Willamette meridian, in the State of Oregon, subject to right of way for ditches, canals, and reservoir sites for irrigation purposes, constructed or which might be constructed by authority of the United States; that said deed was recorded in the office of the recorder of deeds for Clackamas County, Oregon, which is the county where said lands are situated, on the 26th day of January, 1907, and was also recorded in book 32 of State deed records at Salem, Oregon, on page 420.

# VII.

That on the 12th day of July, 1910, the said Finley Morrison and W. J. Morrison with their wives, executed and delivered a warranty deed of said premises conveying the same to the Sligh Furniture Company, a corporation, which deed was recorded in the recorder's effice of Clackamas County, Oregon, on the 3d day of August, 1910.

ROBERT F. MAGUIRE,

Assistant United States Atty, and Atty for Plaintiff. R. Sleight.

Atty. for dfts. W. J. and Finley Morrison & Sligh Furniture Co. (Endorsed:) Stipulation of facts. Filed Apr. 30, 1912.

> A. M. Cannon Clerk U. S. District Court.

# Government's Exhibit C.

"B" M. F. N. 4-207r Forest Service District 6. Received May 6, 1912. Referred to law officer.

37 DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, April 29, 1912.

I hereby certify that the annexed copy of letter dated February 28, 1906, is a true and literal exemplification from the press-copy of letter in this office.

In testimony whereof I have hereunto subscribed by name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

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H. A. Campel, Recorder of the General Land Office,

Filed Jun. 25, 1912.

A. M. CANNON, Clerk U. S. District Court,

1905.

"R" 158648 W.L.K. J.M.P.

Department of the Interior, General Land Office, Washington, D. C., February 29, 1906,

Address only the Commissioner of the General Land Office. The honorable the Secretary of the Interior.

Sir: On January 31, 1905, Adolf Aschoff, forest supervisor, northern division of the Cascade Range Forest Reserve, Oregon, reporting to this office relative to the status of the E. ½ of sec. 36, Tp. 9 S., R. 5 E., W. M., after examination, states that said land is now owned by the Curtis Lumber Company, by purchase

from one Tom Edison; that the improvements found thereon consist of a one-room hemlock log cabin with one door, one window, shake roof and puncheon floor; that said land is estimated to contain 16 million feet of timber, board measure, 5 thousand feet having been cut in 1893 for building purposes.

This land was included in the Cascade Range Forest Reserve by proclamation dated September 28, 1893, which excluded on and after that date, except under the mineral laws, from settlement, entry, sale or other manner of disposal, all vacant unappropriated public lands

included and described in said proclamation.

The records of this office show that the plat of the township survey was approved by the surveyor general of Oregon, January 13, 1894,

and was filed in the local office October 23, 1894.

In view of the statements made by the forest supervisor, and the facts disclosed by the records here, pertaining to the land above described, this office on September 25, 1905, addressed a communication to the State land agent at Salem, Oregon, calling his attention thereto, and that, as the plat of survey of the township was not filed until more than a year after the date of the proclamation withdrawing

and including the land in said forest reserve, following the long settled ruling of the department, it must be held that no right to said land accrued to the State by virtue of the grant made by Congress for the benefit of common schools, and requested him to furnish this office with such information as he might be able to supply relative to the assertion and exercise by the State, at any time, of any right and title to this land, and if any such claim had

ever been made, by what authority it was done.

In reply thereto the State land agent, Mr. Oswald West, on October 5, 1905, in a letter to this office, stated that the E. ½ of sec. 36 was sold by the State to R. Edson, under a contract of sale dated May 17, 1895, and deed given thereto dated September 1, 1900; that the W. ½ of same section was sold and deeded to Valentine Pawley, May 4, 1895, and that from letters and papers on file in his office these people, obviously referring to Edson and Pawley, settled on the land prior to its survey, but why they purchased the land from the State instead of filing homestead entries he is unable to state.

He further represents that "the S. ½ of sec. 16, same township and range, was sold under contract to Ira C. Traver and the N. ½ of the same section to C. R. Bruntsche (likely dummies), August 15, 1898, and these certificates or contracts were soon afterwards assigned to A. S. Baldwin, of the Benson and Hyde crowd, who received a deed to the land June 28, 1899."

He states that he is unable to inform this office why the State land board sold these lands, as it appears that the clerk was cognizant of the fact that they were unsurveyed at the time they were included in the forest reserve and that title did not pass

to the State.

I have the honor, therefore, to recommend, in view of the foregoing facts, and as it clearly appears the title to these lands has never passed out of the United States, that the Forestry Service of the Department of Agriculture be properly advised thereof and requested to promptly assume and exercise such authority and supervision over said lands as will best conserve the Government's interests therein and protect the timber thereon and any other valuable property from waste and wanton destruction.

I inclose herewith copy of the correspondence referred to herein, together with the papers comprising the subject matter thereof.

Very respectfully.

W. A. RICHARDS, Commissioner.

M. L. H.

Defendant's Exhibit 1.

E DBM 102660-1903 38377-1904.

Department of the Interior,
General Land Office,
Washington, D. C., Oct. 13, 1904.

Subject: Omissions in returns of surveys.

The U. S. SURVEYOR GENERAL.

Portland, Oregon.

41 Sir: Your letter dated June 8, 1903, together with the returns of surveys of township No. 3 south, range No. 6 east of the Willamette Meridian, Oregon, have been received.

These returns covering the resurvey of the exterior of the exterior boundaries, and the survey of the subdivisional lines of said township as executed by Frank X. Gesner, D. S., under his joint contract with Alonzo Gesner, No. 740, dated February 12, 1902, have been under consideration in this office during which it has been observed that the deputy has failed to comply with the requirements of the Manual of Surveying Instructions, at the beginning of his work of resurvey of the exterior boundaries, by omitting to either describe the kind of instrument used in the execution of the work, or to record any polaris or solar observations at this time.

It appears the work was probably commenced April 17, 1902, but no polaris observation is recorded during the resurvey of the exterior lines between this date and the commencement of the town—subdivision May 7, and only one solar observation May 3 is recorded

during this part of the work.

A solar observation is reported at the commencement of the subdivision May 7, being the only one during this work, ending June 16, revealing a failure to comply with that section of the manual which requires that on every survey executed with solar instruments,

the deputy will, at least once on each working day, record in his field notes the proper reading of the latitude, arc; the

declination of the sun corrected for refraction, set off on the declination arc; and note the correct local mean time of his observation, etc.

You are directed to notify the deputies that before any further action will be taken in this office looking to the acceptance of the surveys, they will be required to file a supplemental report showing a compliance with the manual in the matters herein cited.

Very respectfully,

(Signed)

W. A. RICHARDS, Commissioner.

L. O. F.

DEPARTMENT OF THE INTERIOR, OFFICE OF U. S. SURVEYOR GENERAL, Portland, Oregon, Sept. 8th, 1905.

Hon. COMMISSIONER GENERAL LAND OFFICE,

Washington, D. C.

Sir: I have the honor to transmit, this day, under separate cover, for your examination, two books of additional field notes of resurvey of exteriors and subdivisions of Tp. 3 S., R. 6 E., W. M. Oregon, executed by Frank X. Gesner, U. S. deputy surveyor, under joint contract No. 740, dated February 12, 1902, including details of the establishment of meridian by polaris and solar observations and tak-

ing the latitude daily. These additional notes were furnished by the deputy in compliance with instructions contained in your letter "E," dated October 13th, 1904.

Very respectfully,

(Signed) JOHN D. DALY, U. S. Surveyor General for Oregon.

"E." DBM. 102660-1903. 19475-1904. 144073-1904. 143766-1905. CLDB.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 31, 1906.

U. S. SURVEYOR GENERAL,

Portland, Oregon.

Sir: Your letter dated September 8, 1905, transmitting two books of additional field notes of the resurvey of exterior and subdivisional lines of Tp. 3 S., R. 6 E., W. M. Oregon, as executed by Frank X. Gesner, D. S., under joint contract No. 740 Oregon, dated February 12, 1902, has been received.

The two books of additional field notes have also been received and an inspection thereof, together with a comparison with the returns previously filed in this office, completes the record of surveys

as called for in office letter "E," dated October 13, 1904.

The completed returns have been compared with the report of Examiner of Surveys N. B. Sweitzer, who examined the work in the field, and, while he does not recommend the acceptance of the surveys, he states that the work is in fairly good condition.

Considering the surface conditions, and that the errors found were few and not very great, this office has reached the conclusion to accept the survey. The surveys are therefore hereby accepted, and you are authorized to file the triplicate plats in the local land office.

No entries of any lands will be allowed, however, in this township until further permission is given, reference being had to the reports of A. R. Greene, special inspector of the Interior Department, dated January 16, 1904, and A. W. Barber, detailed clerk, dated July 27, 1904, reporting that the alleged settlement of applicant for the survey were illegal, and the direction of the Hon. Secretary of the Interior, dated August 10, 1904, based on such reports, that no entries be allowed, but that the survey be accepted for payment only.

Very respectfully,

(Signed)

S. A. RICHARDS, Commissioner,

JCP.

Department of the Interior,
Office of U. S. Surveyor General,
Portland, Oregon, Feb. 6th, 1906.

REGISTER & RECEIVER.

U. S. Land Office,

Portland, Oregon.

Gentlemen: I am this day in receipt of the Hon. Commissioner's letter "E," dated Jan. 31, 1906, in which he accepts the survey of Alonzo & Frank X. Gesner of T. 3 S., R. 6 E., W. M., and directs the filing of the triplicate plat in the local land office. The triplicate plat is this day forwarded to you under separate cover. Please acknowledge receipt.

The commissioner in his letter states: "No entries of any lands will be allowed, however, in this township until further permission is given, reference being had to the reports A. R. Greene, special inspector of the Interior Department, dated January 16, 1904, and A. W. Barber, detailed clerk, dated July 27, 1904, reporting that the alleged settlement of applicants for the survey were illegal, and the direction of the Hon. Secretary of the Interior, dated August 10, 1904, based on such reports, that no entries be allowed, but that the survey be accepted for payment only."

Respectfully,

(Signed) JNO. D. DALY, U. S. Surveyor General for Oregon.

E TCH 191517-1907.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Nov. 16, 1907,

Filing plat.

The U. S. Surveyor General,

Portland, Oregon.

Sir: Referring to office letter "E," dated January 31, 1906, advising you of the acceptance of the survey of T. 3 S., R. 6 E.,
 W. M. Oregon, by Alonzo & F. X. Gesner, D. S., under contract No.

740, and directing that the plat be filed in the local land office, but that no entries be allowed in the township until further notice, reference being had to the reports of A. R. Greene, special inspector, and A. W. Barber, detailed clerk, I have to advise you that I am now in receipt of a report from S. N. Stoner, special agent, dated October 30, 1907, in which he reports:

"I made a field investigation October 28 & 29, 1907, of the bona fides of the applicants for the survey and the present settlers in

T. 3 S., R. 6 E., W. M. xxxx."

It was found that the four applicants for the survey, namely, J. W. Elliott, Marion F. Dolph, Chester V. Dolph, and E. E. Hazard, did actually enter on the land and build cabins thereon, but that no residence on the land was maintained by either of them.

In the matter of present settlers it was found that there are now ten actual bona fide settlers residing on the land, and who took up their residence on their respective claims before the same was with-

drawn from entry.

In addition to the work done by the settlers on their respective claims, they have constructed a fairly good wagon road to their settlement at considerable labor and expense.

The land is heavily timbered and is well adapted to agricul-

ture and fruit when timber is removed.

In view of the fact that the above settlers are acting in good faith in the matter of residence and improvement, it is respectfully recommended that the survey be accepted to the end that the settlers

may file upon their respective claims."

In view of this recommendation you are directed to advise the register and receiver that the suspension of this township from entry, as contained in said letter "E" dated January 31, 1906, is hereby revoked and that they will now place said plat on file in accordance with the instructions of circular of October 21, 1885 (4 L. D., 202).

Very respectfully,

(Signed)

Fred Dennett, Commissioner.

L. J.

DEPARTMENT OF THE INTERIOR, OFFICE OF U. S. Surveyor General, Portland, Oregon, Nov. 23rd, 1907.

Hons. Register & Receiver,

United States Land Office, Portland, Oregon.

Sirs: With my letter of February 6th, 1906, by direction of the Hon. Commissioner of the General Land Office, I forwarded to you triplicate plat of Tp. 3 S., R. 6 E., the same having been accepted for payment by the Hon. Commissioner's letter "E," dated January 31st, 1906. You were directed in this letter, in accordance

with instructions contained in the Commissioner's letter of acceptance, that no entries of any land will be allowed until

further permission is given.

I am now in receipt of the Hon. Commissioner's letter "E," dated November 16th, 1907, in which in accordance with a recommendation made to him by Mr. S. N. Stoner, special agent, I am directed to advise you that the suspension of this township from entry as contained in said letter "E" dated January 31st, 1906, is hereby revoked, and that you will place said plat on file in accordance with the instructions of circular of October 21, 1885 (IV L. D. 202).

Please acknowledge receipt of this.

Respectfully,

(Signed) Geo. A. Westgate, U. S. Surveyor General for Oregon.

4-699.

DEPARTMENT OF THE INTERIOR, OFFICE OF U. S. Surveyor General, Portland, Oregon, June 4, 1912.

I, Geo. A. Westgate, U. S. surveyor general for Oregon, do hereby certify that the annexed copies of official letters are true and literal exemplifications of the originals thereof on file in my office.

Geo. A. Westgate, [SEAL.]

United States Surveyor General for Oregon.

Filed June 25, 1912.

A. M. Cannon, Clerk U. S. District Court.

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Defendants' Exhibit 2.

DEPARTMENT OF THE INTERIOR, UNITED STATES LAND OFFICE, Portland, Oregon, June 6th, 1912.

I, H. F. Higby, register of the United States land office, Portland, Oregon, hereby certify that the records of this office show that on the plat of Government survey of township 3 south, range 6 east, Willamette meridian, is a marginal notation in ink as follows: "Received in the United States land office at Portland, Oregon, February 7, 1906." Same is signed "Algernon S. Dresser, register."

It is further shown by letter report of the register and receiver of this office to the Commissioner of the General Land Office, under date of May 5, 1909, in reference to the above stated township plat of survey, that, "By (General Land Office letter) C" of November 30, 1907, we were directed that the plat should be officially opened, and in accordance therewith advertisement was made and the required instructions in reopening of township plats were complied with, and January 8, 1908, at 9 o'clock a.m., named as the date when actual settlers would be accorded the privilege of presenting their claims."

H. F. Highy, Register.

Filed June 25, 1912.

A. M. Cannon, Clerk U. S. District Court. Defendants' Exhibit 3.

DEPARTMENT OF THE INTERIOR, OFFICE OF U. S. SURVEYOR GENERAL, Portland, Oregon, June 20th, 1912.

Mr. R. Sleight,

1410 Yeon Bldg., Portland, Oregon.

Sir: I am this day in receipt of your letter of June 20th, 1912, in which you wish to be informed if the following lines of the following townships have been surveyed on or before January 25th, 1907,

namely:

The south township line of frac. T. 1 N., R. 7 E. The north township line of T. 1 S., R. 7 E. The section lines between secs. 6 & 7, 5 & 8, 8 & 9, 16 & 17, 19 & 20, 28 & 29, and 28 & 33, in T. 1 N., R. 8 E., and the township line between sec. 1, T. 1 N., R. 7 E., and sec. 6, T. 1 N., R. S E., and the north line of Tp. 3 S., R. S E., and also of the subdivisions of said township 3 S., R. 8 E., and all of the township and subdivisional lines of T. 3 S., R. 9 E.

In reply, I have to state that the base line between Tps. 1 N. and 1 S., R. 7 E., was surveyed in 1858. The S. boundary of T. 3 S., R. 9 E., was surveyed in 1882. The east boundary of T. 3 S., R. 9 E., and the north boundary of secs. 1, 2, 3, and the west boundary of secs.

18, 19, 30, and 31, T. 3 S., R. 9 E., were surveyed in 1884.

The east boundary of secs. 13, 24, 25, and 36, T. 3 S., R. 8 E., were surveyed in 1884.

The balance of the lines mentioned in your letter are un-51 surveyed.

Respectfully,

GEO. A. WESTGATE, U. S. Surveyor General for Oregon.

Filed June 25, 1912.

A. M. CANNON. Clerk U. S. District Court.

Defendants' Exhibit 4.

Address reply to "district forester."

OG District-Atlas

> UNITED STATES DEPARTMENT OF AGRICULTURE, Forest Service, District 6,

Beck Building, Portland, Oregon, June 20, 1912.

Mr. R. SLEIGHT,

c/o Coovert & Sleight, Yeon Bldg., Portland, Oregon.

Dear Sir: I desire to inform you, in accordance with the request of Mr. A. C. Shaw, that, in the understanding of this office, the broken lines on proclamation diagrams, of which the inclosed diagram dated January 25, 1907, is one, are intended to indicate that the townships were unsurveyed at that date. The township and section lines indicated by solid lines are similarly intended to indicate that those areas were surveyed at the time.

Very truly, yours,

Geo. H. Cecil.,

District Forester.

(Enclosure:) Filed June 25, 1912.

A. M. CANNON, Clerk U. S. District Court.

And afterwards, to wit, on the 19th day of June, 1913, there was duly filed in said court, a petition for appeal in words and figures as follows, to wit:

Petition for appeal.

In the District Court of the United States for the District of Oregon.

United States of America, Plaintiff,

E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and the Slight Furniture Company, a corporation, defendants.

To the Hon. Chas. E. Wolverton, district judge, and the judge before whom said cause was tried:

The above named defendants, Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, conceiving themselves aggrieved by the decree entered herein March 15, 1913, by which it was decreed that plaintiff was entitled to the relief as prayed in its bill of complaint and that the plaintiff's title to the lands described in said decree and to every part and parcel thereof is good and valid, and that these defendants and each of them have no right, title or interest therein, and that the contracts of sale, certificates, deeds and other conveyances under which these

to the lands described in said decree and to every part and parcel thereof is good and valid, and that these defendants and each of them have no right, title or interest therein, and that the contracts of sale, certificates, deeds, and other conveyances under which these defendants claim any estate, right, title, or interest in said lands be vacated, cancelled and held for naught, and that these defendants and each of them be forever enjoined from asserting any claim to said lands do hereby appeal to the United States Circuit Court for the Ninth Circuit from said decree and from the whole and every part thereof for the reasons set forth in the assignment of errors which is herewith filed by these defendants, and these defendants pray that this their petition for said appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decree was made duly authenticated may be sent to the United States Circuit Court of Appeals for the Ninth Circuit. And that, pending the determination of said appeal, said decree be suspended upon these

defendants and appellants giving a bond in such sum as shall be fixed by the court, and that the amount of said bond to be given upon appeal be fixed by the court.

Dated June 19, 1913.

R. Sleigh,
Solicitor for dfts. Finley and
W. J. Morrison and Sligh Furniture Co.

54 (Endorsed:) Petition for appeal. Filed June 19, 1913.

A. M. Cannon,

Clerk U. S. District Court.

And afterwards, to wit, on the 19 day of June, 1913, there was duly filed in said court an order allowing appeal in words and figures, as follows, to wit:

Order allowing appeal.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

E. J. Cowlishaw, W. J. Morrison, Finley Morrison and the Sligh Furniture Company, a corporation, defendants.

On reading and filing the petition of Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, for an order allowing an appeal from the decree entered herein March 15, 1913, and upon the assignment of errors made and filed by said defendants, and on motion of R. Sleight, of counsel for said defendants:

It is ordered that the appeal of Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, to the United States Circuit Court of Appeals for the Ninth Circuit from

said decree which was entered herein on March 15, 1913, be, and the same is hereby, allowed, and that a transcript of the record be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated June 19th, 1913.

By the court:

CHAS. E. WOLVERTON,

Judge.

(Endorsed:) Order allowing appeal. Filed June 19, 1913.
A. M. Cannon,

Clerk U. S. District Court.

And afterwards, to wit, on the 19 day of June, 1913, there was duly filed in said court assignments of error, in words and figures as follows, to wit:

# Assignments of error.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF,

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E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and the Sligh Furniture Cimpany, a corporation, defendants.

The above named defendants, Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, assign the following errors upon the decree herein which was entered March 15, 1913:

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Assignment of errors.

I.

In decreeing that the plaintiff is entitled to the relief as prayed in its bill of complaint.

II.

In decreeing that the plaintiff's title to the southwest quarter and the northwest quarter and the south half of the northeast quarter and the southeast quarter of section sixteen (16), township three (3) south, range six (6) east, W. M., State of Oregon, and to every part and parcel thereof, is good and valid.

#### III.

In decreeing that defendants, Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, and each and every of them have no right, title, interest, or estate in the said lands or any part thereof, and that the contracts of sale, certificates, deeds, and other conveyances under and by virtue of which the said defendants and each of them claim any estate, right, title, or interest in said lands be cancelled, vacated, and held for naught and that the said named defendants and each of them be forever enjoined and debarred from asserting any claim whatever in or to said lands or any part thereof adversely to the plaintiff.

#### IV.

In decreeing that the plaintiff recover costs and disbursements in this suit from said defendants.

50833-14--3

# V.

In failing to decree that the suit could not be maintained and should be dismissed.

R. Sleight, Solicitor for dfts. Finley Morrison, W. J. Morrison, and Sligh Furniture Co.

(Endorsed:) Assignments of error. Filed June 19, 1913.

A. M. CANNON, Clerk U. S. District Court.

And afterwards, to wit, on the 19 day of June, 1913, there was duly filed in said court a bond on appeal in words and figures as follows, to wit:

Bond on appeal.

In the District Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, PLAINTIFF,

E. J. Cowlishaw, W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a corporation, defendants.

Know all men by these presents that we, Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, as principals, and Chas. H. Chick, of Portland, Oregon, as surety, are held and firmly bound unto the United States of America, plaintiff herein,

in the full and just sum of five hundred dollars to be paid to the plaintiff aforesaid, for which payment well and truly to be made we bind ourselves, our successors, heirs, executors,

administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 19th day of June, 1913.

Whereas the United States District Court for the District of Oregon, in the cause above entitled pending in said court, did make and enter a decree on the 15th day of March, 1913, in favor of the plaintiff and against these defendants, adjudging the plaintiff entitled to the relief prayed in its bill of complaint and that these defendants and each of them be barred of all right, title, or interest in and to the lands described in the complaint, and be enjoined from asserting any claim thereto, and these defendants having obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the decree of the aforesaid suit, and a citation directed to the said plaintiff is about to be issued citing and admonishing it to appear in the United States Circuit Court of Appeals for the Ninth Circuit to be holden at San Francisco, California, and an order having been made and entered that these defendants should give a bond upon said

appeal in the sum of \$500.00, with surety, to be approved by the

judge or clerk of this court:

Now the condition is such that if the said defendants Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, shall prosecute their said appeal to effect and shall answer all damages and costs that may be awarded against them if they fail to make their plea good then this obligation is to be void, otherwise to remain in full force and virtue.

FINLEY MORRISON.
W. J. MORRISON.
THE SLIGH FURNITURE COMPANY,
By R. Sleight, Attorney.
Chas. H. Chick.

The sufficiency of the foregoing bond and surety is hereby approved this 19th day of June, 1913.

CHAS. E. WOLVERTON, Judge.

(Endorsed:) Bond. Filed June 19, 1913.

A. M. Cannon, Clerk U. S. District Court.

And afterwards, to wit, on the 19 day of June, 1913, there was duly filed in said court, a citation on appeal, in words and figures, as follows, to wit:

Citation on appeal.

In the District Court of the United States for the District of Oregon.

# United States of America, plaintiff,

18.

E. J. Cowlishaw, W. J. Morrison, Finley Morrison and the Sligh Furniture Company, a corporation, defendants.

To the United States of America, and the United States Attorney for the District of Oregon:

You and each of you are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, California, thirty days from and after the day this citation bears date pursuant to an order allowing the appeal of the defendants, W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a corporation, filed in the clerk's office of the District Court of the United States for the District of Oregon, wherein Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, are appellants and you are appellee, to show cause if any there be why the decree entered in said suit in favor of the above-named plaintiff and against the above-named defendants Finley Morrison, W. J. Morrison, and the Sligh Furniture Company, a corporation, should not be reversed

and why such further proceedings should not be had therein as will

be agreeable to equity.

Witness the Hon. Chas. E. Wolverton, judge of the District Court of the United States for the District of Oregon, this 19th day of June, 1913.

CHAS. E. WOLVERTON, Judge.

Due service of the foregoing citation admitted this June 19, 1913. E. A. Johnson,

Atty. for Ptff d Asst. Dist. Atty. for the District of Oregon.

(Endorsed:) Citation. Filed June 19, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 26 day of June, 1913, there 61 was duly filed in said court an order, in words and figures as follows, to wit:

Order certifying up exhibits.

In the District Court of the United States for the District of Oregon.

No. 3866.

June 26, 1913.

THE UNITED STATES OF AMERICA, COMPLAINANT,

28.

FINLEY MORRISON ET AL., DEFENDANTS.

It appearing to the court that complainant's Exhibits A and B introduced in evidence on the trial of this cause in this court are of such character as to require inspection by the appellate court;

It is ordered that said exhibits be certified up with the record to the United States Circuit Court of Appeals, Ninth Circuit, on the appeal thereof. CHARLES E. WOLVERTON, Judge.

(Endorsed:) Order. Filed June 26, 1913.

A. M. CANNON. Clerk U. S. District Court.

And afterwards, to wit, on the 26 day of June, 1913, there was duly filed in said court an order, in words and figures as follows, to wit:

Order enlarging time to file transcript.

In the District Court of the United States for the District of Oregon.

No. 3866.

June 26, 1913.

THE UNITED STATES OF AMERICA, COMPLAINANT,

28.

FINLEY MORRISON ET AL., DEFENDANTS.

Now, at this day, for good cause shown, it is ordered that the defendants' time for filing the record and docketing this cause in the United States Circuit Court of Appeals, Ninth Circuit, on the appeal thereof, be, and the same is hereby, enlarged and extended to and including the 1st day of August, 1913.

Chas. E. Wolverton,

Judge.

Clerk's certificate.

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UNITED STATES OF AMERICA,

District of Oregon. 88:

I. A. M. Cannon, clerk of the District Court of the United States for the District of Oregon, certify that the foregoing pages, numbered 1 to 63, inclusive, contain and are a full, true, and correct transcript of the proceedings had in said court in the cause entitled "United States of America vs. Finley Morrison et al., defendants," and contains in itself, and not by reference, all the pleadings, orders, papers and files in said clause designated by the parties to be included in this record, and in any way pertaining to the final decree entered herein, the opinion of the court, all the testimony and exhibits, the petition for appeal, order allowing same, bond on appeal, assignments of error, the citation on appeal, and that there is herewith certified up with the record complainant's original Exhibits A and B, as ordered by the court.

In witness whereof I have hereunto set my hand and affixed the seal of said court this 24 day of July, 1913.

(Signed) A. M. CANNON, Clerk. [SEAL.]

(Endorsed:) Service by copies (2) admitted at Portland, Oregon, July 24", 1913.

> (Signed) E. A. Johnson, Asst. U. S. Atty.

- 63 United States Circuit Court of Appeals for the Ninth Circuit.
- W. J. Morrison, Finley Morrison, and Sligh Furniture Company, a corporation, appellants,

No. 2295.

vs.

THE UNITED STATES OF AMERICA, APPELLEE.

Upon appeal from the District Court of the United States for the District of Oregon.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

- 64 Index to proceedings had in the United States Circuit Court of Appeals for the Ninth Circuit.
- W. J. Morrison, Finley Morrison, and Sligh Furniture Company, a corporation, appellants,

No. 2295.

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THE UNITED STATES OF AMERICA, APPELLEE.

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At a stated term, to wit, the September term, 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room in the city of Portland, in the State of Oregon, on Monday, the fifteenth day of September, in the year of our Lord one thousand nine hundred and thirteen.

Present: Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable William W. Morrow, circuit judge.

W. J. Morrison et al., appellants,

No. 2295.

UNITED STATES OF AMERICA, APPELLEE.

Order of submission.

Ordered, appeal in the above-entitled cause argued by Mr. R. Sleight, counsel for the appellants, W. J. Morrison and Finley Morrison—there being no appearance in open court of counsel for or

on behalf of the Sligh Furniture Company—and by Mr. Everett A. Johnson, counsel for the appellees, and submitted to the court for consideration and decision, with leave to Mr. Sleight to file an additional authority.

At a stated term, to-wit: the October term A. D. 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the court room thereof, in the city and county of San Francisco, in the State of California, on Monday, the second day of February, in the year of our Lord one thousand nine hundred and fourteen:

Present: Honorable William B. Gilbert, circuit judge, presiding; Honorable Erskine M. Ross, circuit judge; Honorable William C. Van Fleet, district judge, and the clerk, crier, and the marshal.

In the matter of the filing of certain opinions, and of the filing and recording of certain judgments and decrees of this court.

Ordered, that each of the opinions this day rendered by the court in the following-entitled causes be filed by the clerk, and that a judgment or decree in such cause be filed and recorded in the minutes in accordance with the opinion filed therein:

W. T. Morrison et al., appellants,
vs.
The United States of America, appellee.

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[Title of court and cause.]

Opinion, U. S. Circuit Court of Appeals.

Upon appeal from the District Court of the United States for the District of Oregon.

Before Gilbert, Ross, and Morrow, circuit judges.

Ross, circuit judge.

The sole question in this case is whether the lands here in controversy, which constitute a part of section 16 township 3 south, range 6 east of the Willamette meridian, in the State of Oregon, passed to that State, and through it to its grantees, prior to the attempted withdrawal of the said lands from any disposition by the executive department of the Government.

The act of Congress of August 14, 1848 (9 St. Lg., 323, entitled "An act to establish the territorial government of Oregon," pro-

vided in its twentieth section:

"That when the lands in the said Territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market, section numbered sixteen and thirty-six in each township in said Territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in said Territory, and in the States and

Territories hereafter to be erected out of the same."

In the act of Congress of September 27, 1850 (9 St. Lg., 496), entitled "An act to create the office of surveyor general of the public lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands," it was provided, among

other things:

"That if, in the opinion of the Secretary of the Interior, it be preferable, the surveys in said Territory shall be made after what is known as the geodetic method, under such regulations and upon such terms as may be provided by the Secretary of the Interior or other department having charge of the surveys of the public lands, and that said geodetic surveys shall be followed by topographical surveys, as Congress may from time to time authorize and direct; but if the present mode of survey be adhered to, then it shall be the duty of said surveyor to cause a base line and meridian to be surveyed, marked, and established, in the usual manner, at or near the mouth of the Willamette River; and he shall also cause to be surveyed, in townships and sections, in the usual manner and in accordance with the laws of the United States which may be in force, the district of country lying between the summit of the Cascade Mountains and the Pacific Ocean and south and north of the Columbia River: Provided, however, That none other than township lines shall be run where the land is deemed unfit for cultivation. That no deputy surveyor shall charge for any line except such as may be actually run and marked, nor for any line not necessary to be run, and that the whole cost of surveying shall not exceed the rate of eight dollars per mile for every mile and part of mile actually surveyed and marked," and after making certain donations of public lands to certain specifically described settlers, declared, in its ninth section, as follows:

"That no claim to a donation right under the provisions of this act upon sections sixteen or thirty-six shall be valid or allowed, if the residence and cultivation upon which the same is founded shall have commenced after the survey of the same, nor shall such claim attach to any tract or parcel of land selected for a military post, or within one mile thereof, or to any other land reserved for governmental purposes, unless the residence and cultivation thereof shall have commenced previous to the selection or reser-

vation of the same for such purposes."

By its act of February 19, 1851 (9 St. Lg., 568), entitled "An act to authorize the legislative assemblies of the Territories of Oregon and Minnesota to take charge of the school lands in said Territories,

and for other purposes," Congress enacted:

"That the governors and legislative assemblies of the Territories of Oregon and Minnesota be, and they are hereby, authorized to make such laws and needful regulations as they shall deem most expedient to protect from injury and waste sections sixteen and

thirty-six in said Territories, reserved in each township for the support of schools therein."

By its act of February 14, 1859 (11 St. Lg., 383), entitled "An act for the admission of Oregon into the Union," Congress provided,

among other things, as follows:

"That the following propositions be, and the same are hereby, offered to the said people of Oregon for their free acceptance or rejection, which, if accepted, shall be obligatory on the United States and upon the said State of Oregon, to wit, First. That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools. Second. That seventy-two sections of land shall be set apart and reserved for the use and support of a State university, to be selected by the governor of said State, subject to the approval of

the Commissioner of the General Land Office, and to be appropriated and applied in such manner as the legislature of 70 said State may prescribe for the purpose aforesaid, but for no other purpose. Third. That ten entire sections of land, to be selected by the governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings or for the erection of others at the seat of government under the direction of the legislature thereof. Fourth. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the governor thereof within one year after the admission of said State. and when so selected to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided. That no salt spring or land, the right whereof is now vested in any individual or individuals or which may be hereafter confirmed or adjudged to any individual or individuals, shall by this article be granted to said State. Fifth. That five per centum of the net proceeds of sales of all public lands lying within said State shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State for the purpose of making public roads and internal improvements as the legislature shall direct: Provided, That the foregoing propositions hereinbefore offered are on the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof, and that in no case shall nonresident proprietors be taxed higher than residents. Sixth. And that the said State shall never tax the lands or the property of the United States in said State: Provided, however, That in case any of the lands herein granted to the State of Oregon have heretofore been confirmed to the 71 Territory of Oregon for the purposes specified in this act,

the amount so confirmed shall be deducted from the quantity

specified in this act."

The propositions specifically stated in sec. 4 of the act of February 14, 1859, as well as the aforesaid acts respecting the school sections, were, according to the stipulation of facts entered into by and between the respective parties to the present case, accepted by an act of the Legislative Assembly of the State of Oregon of June

3, 1859.

The stipulation shows these further facts: Prior to May 27, 1902, the lands in controversy were unsurveyed. On that day a field survev of their east boundary was made, and on June 2 following the north, west, and south boundaries thereof were surveyed, and the said section 16 subdivided according to the rules of the land office for surveying the lands of the Government. This field survey was approved by the United States surveyor general for the State of Oregon June 2, 1903, and on the 8th of the same month that officer transmitted copies of the plat of the survey and field notes to the Commissioner of the General Land Office at Washington, which survey was accepted by the commissioner January 31, 1906. On November 16, 1907, the commissioner directed the surveyor general to place a plat of the survey in the field, in the local land office of the United States at Portland, Oregon, which was on the same day accordingly filed in that office. Shortly prior to the acceptance by the commissioner of the survey mentioned, to wit, on the 16th day of December, 1905, the Secretary of the Interior made an order temporarily withdrawing, for forestry purposes, from all forms of disposition whatsoever except under the mineral laws of the United States "all the vacant and unappropriated public lands within the areas specifically described in that certain letter of the Commissioner of the General Land Office, of date December 12, 1905, to the Secretary of the Interior, including all of township three (3) south, range six (6) east of the Willamette meridian." In December, 1905, a telegram was sent by the Commissioner of the General Land Office to

Portland, Oregon, informing him of said withdrawal and stating that the land had been withdrawn for forestry purposes, and on December 19, 1905, a letter was sent by the said commissioner to the register and receiver, giving him the same information. The said withdrawal so made by the Secretary of the Interior and the Commissioner of the General Land Office described said lands according to the rectangular system of Government survey. October 10, 1906, the State of Oregon, in pursuance of its laws for the disposal of lands owned by it, executed a certificate of sale to one Robert F. Louden for the southeast quarter of the said section 16, and to Alvina S. Louden a similar certificate for the south half of the northeast quarter

ter and the northwest quarter of the northwest quarter of the said section, who thereafter assigned the said certificates of sale to the appellants Finley and W. J. Morrison, and on January 9, 1907, the State of Oregon, on the surrender of such certificates executed to the latter purchasers a deed of grant covering the said described lands. On July 9, 1910, the said Morrisons conveyed the same lands to the appellant Sligh Furniture Company. January 25, 1907, the President of the United States issued a proclamation enlarging the Cascade Range Forest Reserve, the boundaries of which included the said land, which proclamation, however, provided, among other things, that all lands which at the date or the proclamation were embraced within any withdrawal or reservation for any use or purpose to which the reservation for forest uses was inconsistent, were excepted from its force and effect.

It is thus seen that long before Oregon became a State Congress provided that when the lands in the then Territory should be surveyed under the direction of the Government of the United States preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in the Territory "shall be,

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and the same hereby is, reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same."

Two years and more later, in passing what is commonly known as the donation act, Congress expressly provided that no donation right thereby conferred should affect any sixteenth or thirty-sixth section if the residence and cultivation upon which such donation right is founded "shall have commenced after the survey" of such sixteenth and thirty-sixth sections; and by a subsequent act of January 7, 1853 (10 St. Lg., 150), it gave to the Territory of Oregon the right to take other lands in lieu of such of the sixteenth and thirty-sixth sections as should be acquired by third parties under the donation act.

By its act of February 9, 1851, respecting the Territories of Oregon and Minnesota, Congress expressly authorized the governors and legislative assemblies of those Territories "to make such laws and needful regulations as they shall deem most expedient to protect from injury and waste sections sixteen and thirty-six in said Territories, reserved in each township for the support of schools therein."

And finally, by the enabling act of February 14, 1859, Congress expressly declared, among other things, that the propositions thereby offered to the people of Oregon for their acceptance or rejection, "if accepted shall be obligatory upon the United States, and upon the State of Oregon." Those propositions were, we repeat: "First. That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools. Second. That seventy-two sections

of land shall be set apart and reserved for the use and support of a State university, to be selected by the governor of said State,

subject to the approval of the Commissioner of the General 74 Land Office, and to be appropriated and applied in such manner as the legislature of said State may prescribe for the purpose aforesaid, but for no other purpose. Third. That ten entire sections of land, to be selected by the governor of said State, in legal subdivisions, shall be granted to said State for the purpose of completing the public buildings, or for the erection of others at the seat of government, under the direction of the legislature thereof. Fourth. That all salt springs within said State, not exceeding twelve in number, with six sections of land adjoining, or as contiguous as may be to each, shall be granted to said State for its use, the same to be selected by the governor thereof within one year after the admission of said State, and when so selected, to be used or disposed of on such terms, conditions, and regulations as the legislature shall direct: Provided, That no salt spring or land, the right whereof is now vested in any individual or individuals, or which may be hereafter confirmed or adjudged to any individual or individuals, shall Fifth. That five per centum by this article be granted to said State. of the net proceeds of sales of all public lands lying within said State which shall be sold by Congress after the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to said State, for the purpose of making public roads and internal improvements, as the legislature shall direct: Provided, That the foregoing propositions, hereinbefore offered, are on the condition that the people of Oregon shall provide by an ordinance, irrevocable without the consent of the United States, that said State shall never interfere with the primary disposal of the soil within the same by the United States, or with any regulations Congress may find necessary for securing the title in said soil to bona fide purchasers thereof; and that in no case shall nonresident proprietors be taxed higher than residents. Sixth. And that the said State shall never tax the lands or the property of the United States in said State: Provided, however, that in case any of the lands herein granted to the State of Oregon have heretofore been

75 confirmed to the Territory of Oregon for the purposes specified in this act, the amount so confirmed shall be deducted from the quantity specified in this act."

The propositions so submitted to the people of Oregon having been accepted by them, it cannot be doubted, we think, that the legislation of Congress amounted to a congressional grant to that State of all the sixteenth and thirty-sixth sections for school purposes to which no right of any third party attached prior to the proper identification of such sections.

Such identification of the lands here in controversy was first made by the survey in the field June 2, 1902, which survey, it appears, was approved on the same day by the United States surveyor general for the State of Oregon and by him transmitted to the General Land Office on the 8th of the same month, where it remained unaltered until its express approval by that office on the 31st day of January, 1906, and where in the meantime it met with recognition and was acted upon to identify the lands in question by the Commissioner of the General Land Office on the 12th and 19th days of December, 1905, and by the Secretary of the Interior on the 16th day of December, 1905, in making his order of withdrawal relied upon by the Government in the present case. The fact that there was a delay of about three and a half years in the express approval of the survey by the Commissioner of the General Land Office is, in our opinion, wholly unimportant, and by no means unusual. The approval, when made, under the familiar doctrine of relation dopted by the courts for purposes of justice, related back to the inception of the proceeding, thereby perfecting the grant which was promised by the Government when Oregon was a Territory, and confirmed when it, as a State, accepted the propositions offered by Congress in its enabling act of 1859. It was, as said by the Supreme Court in a similar case, "an unalterable condition of the admission, obligatory upon the United States, that section sixteen (16) in every township of the public lands in the State, which had not been sold or otherwise disposed of, should be granted to the State for the use of

schools. It matters not whether the words of the compact be considered as merely promissory on the part of the United States, and constituting only a pledge of a grant in future, or as operating to transfer the title to the State upon her acceptance of the proposition as soon as the sections could be afterwards identified by the public surveys. In either case, the lands which might be embraced within those sections were appropriated to the State. They were withdrawn from any other disposition and set apart from the public domain so that no subsequent law authorizing a sale of it could be construed to embrace them, although they were not specially excepted. All that afterwards remained for the United States to do with respect to them, and all that could be legally done under the compact, was to identify the sections by appropriate surveys; or, if any further assurance of title was required, to provide for the execution of proper instruments to transfer the naked fee, or to adopt such further legislation as would accomplish that result. They could not be diverted from their appropriation to the State." Wetherby, 95 U. S., 517.

In the case cited the court proceeded:

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"In Cooper v. Roberts, 18 How., 173, this court gave construction to a similar clause in the compact upon which the State of Michigan was admitted into the Union, and held, after full consideration, that by it the State acquired such an interest in every section 16 that her title became perfect so soon as the section in any township was designated by the survey. 'We agree,' said the court, 'that until the survey of the township and the designation of the specific section

the right of the State rests in compact—binding, it is true, the public faith and dependent for execution upon the political authorities. Courts of justice have no authority to mark out and define the land which shall be subject to the grant. But when the political authorities have performed this duty, the compact has an object upon which it can attach, and if there is no legal impediment the title of the State becomes a legal title. The just ad rem by the perform-

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ance of that executive act becomes a jus in re, judicial in its nature and under the cognizance and protection of the judicial authorities, as well as the others.' In this case the township embracing the land in question was surveyed in October, 1852, and was subdivided into sections in May and June, 1854. With this identification of the section the title of the State, upon the authority cited, became complete, unless there had been a sale or other disposition of the property by the United States previous to the compact with the State. No subsequent sale or other disposition, as already stated, could defeat the appropriation."

We see nothing in the cases of Minnesota v. Hitchcock, 185 U. S., 373, or Wisconsin v. Hitchcock, 201 U. S., 202, as applied to the facts in the present case, at all inconsistent with what was said in Beecher v. Wetherby, 95 U. S., 517, or in Cooper v. Roberts, 18 How., 173.

In Minnesota v. Hitchcock it appeared that the sixteenth and thirty-sixth sections were not surveyed until after the rights of the Indians had attached thereto, and that therefore the lands there in question were not "public lands" at the time of the grant contained in the act admitting the State. The court in its opinion in Minnesota v. Hitchcock expressly referred to and quoted from the case of Beecher v. Wetherby, as also its previous decisions in the cases of United States v. Thomas, 151 U. S., 577, and Cooper v. Roberts, 18 How., 173, and, so far from disapproving of them, pointed out the distinctions existing between them and the case then under consideration.

The case of Wisconsin v. Hitchcock, supra, was expressly based upon the Thomas case, which in turn referred to the case of Beecher v. Wetherby with approval.

It hardly need be said that the lands here in controversy being embraced by the grant to the State of Oregon, the withdrawal order made by the Secretary of the Interior on December 16, 1905, which in express terms excluded therefrom all lands previously appropriated, could not defeat or in any way affect such grant. Tubbs v.

78 Wilhoit, 138 U. S., 134. And, as has been seen, the proclamation of the President of date January 25, 1907, also expressly excepts from its operation any inconsistent rights.

For the reasons stated the judgment is reversed and the cause remanded to the court below with directions to dismiss the bill.

(Endorsed:) Opinion. Filed Feb. 2, 1914. (Signed) F. D. Monckton, clerk.

# [Title of court and cause.]

Appeal from the District Court of the United States for the District of Oregon.

R. Sleight, for appellants.

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Clarence L. Reames, U. S. attorney, and Everett A. Johnson, asst. U. S. attorney, for appellee.

Before Gilbert, Ross, and Morrow, circuit judges.

Gilbert, circuit judge, dissenting:

The opinion of the majority of this court is based upon what was said rather than what was decided in Beecher v. Wetherby, 95 U. S., 517. There was under consideration in that case the act for the admission of the State of Wisconsin, of date August 6, 1846, which provided "that section numbered 16 in every township of the public lands in said State, and, when such section has been sold or otherwise

disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said State for the use of schools."

80 The section 16 which was in controversy in that case had been included in lands occupied by the Menomonee Indians, which they had held under treaty since 1825. In 1848 they ceded certain of their lands, and there was set apart to them by the President a portion thereof, which included the land in controversy. The Legislature of Wisconsin, by a joint resolution of February 1, 1853, declared its assent that the Indians remain on the tract so set part to them. Under the act of Congress of February 6, 1871, the lands so set apart were directed to be sold for the benefit of the Indians, and upon such sale the plaintiff obtained patents to section 16. In the meantime, in 1854, the lands had been surveyed. The court held the plaintiff's patents void, and ruled that the grant to the State had attached upon the identification of the land by the survey of 1854. subject only to the Indian's right of occupancy; that when that was extinguished the title of the State was complete. In Minnesota v. Hitchcock, 185 U. S., 373, the court thus stated the purport of the decision in Beecher v. Wetherby: "The ruling was that the United States held the fee, subject only to the Indian right of occupancy; that by the school-land section in the enabling act there was a grant, or promise to grant, in either event to be taken as an appropriation of the fee to the State, subject to the Indian right of occupancy; that the Indians had removed from the lands and had received other lands for their occupation, and hence all Indian rights had ceased."

The essential difference between Beecher v. Wetherby and the case at bar is that in the latter there had been no survey or identification of the lands at the time when they were set apart for a reservation, and I submit that the decision of the present case is controlled by the principle stated in Heydenfeldt v. Daney Gold, etc., Co. (93 U. S., 634). In that case the provision of the enabling act for the admission

of Nevada of March 21, 1864, as to school lands declared that they "shall be and are hereby granted." The lands had not been surveyed, nor had Congress then authorized any disposi-

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tion of the public lands within that territory. It was held, notwithstanding that, there were words of present grant in the act, the intention was to grant such school lands as at the time of survey and identification had not been disposed of. The court said: "Until the status of the lands was fixed by a survey, and they were capable of identification, Congress reserved absolute power over them." And again: "It is quite certain that the language of the qualification was intended to protect the State against a loss that might happen through the action of Congress in selling or disposing of the public domain." It is contended that the decision in that case was based upon the fact that the Territory of Nevada was a mining country, that Congress must have intended that the mineral land should remain subject to discovery, entry, and exploitation, and that those features distinguish the Nevada act from all others. But that decision has been recognized, both by the Supreme Court and by the Land Department, as settling general principles applicable to other school land grants. It is true that the case was not mentioned or discussed in the opinion in Beecher v. Wetherby, but it was cited in the brief of counsel, and it is in entire harmony with what was actually decided in that case. In New York Indians v. United States (170 U. S., 1, 18) the court cited the Heydenfeldt case, and after quoting the language of the grant to Nevada said: "These words were held, under then peculiar language of the act, not to constitute a grant in prae senti, but an inchoate and incomplete grant until the premises were surveyed by the United States and the survey properly approved." In Minnesota v. Hitchcock the court said: "As in Heydenfeldt v. Daney Gold & Silver Mining Co., supra, priority was given to a mining entry over the State's school right, so here, in terms, preference is given to private entries, town-site entries, or reserva-

tions for public use. In other words, the act of admission with its clause in respect to school lands was not a promise by Congress that under all circumstances, either then or in the future, these specific school sections were or should become the property of the State. The possibility of other disposition was contemplated, the right of Congress to make it was recognized, and provision made for a selection of other lands in lieu thereof. In this connection may also be noticed the act of February 28, 1891, although passed after the approval of the agreement for the cession of these lands by the Indians. That act in terms authorized the selection of other lands 'where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States.'

The grant to Minnesota, which was construed in that case, is identical in language with the grant to the State of Oregon, and the construction which the court placed upon it is, it seems to me, absolutely conclusive of the question which is presented on this appeal.

The general intention and policy of congressional grants of school lands to the States, and the construction which Congress placed upon its grants is shown in its legislation on the same subject subsequent to the grant to the State of Oregon, legislation which clearly indicates that Congress did not consider that by virtue of those grants it had wholly parted with title and control of the school lands. Twelve days after the date of the grant to Oregon, Congress enacted: "That where settlements, with a view to preemption, have been made before the survey of the lands in the field which shall be found to have been made on sections sixteen or thirty-six, said sections shall be subject to the preemption claim of such settler; and if they or either of them shall have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory

in which the lands lie, other lands of like quantity are hereby appropriated in lieu of such as may be patented by preemptors." (11 Stats., 385.) This act was subsequently embodied in section 2275 of the Revised Statutes, and by the act of February 28, 1891, it was amended by inserting the following: "And other lands of equal arceage are also hereby appropriated and granted and may be selected by said State or territory, where sections 16 and 36 are mineral land or are included within any Indian, military, or other reservation, or are otherwise disposed of by the

United States," etc.

The decisions of the Secretary of the Interior relating to public lands have uniformly followed the rule of the Heydenfeldt case. In State of Colorado, 6 L. D., 412, Secretary Lamar, referring to the act of February 28, 1861, for which provided a temporary government for the Territory of Colorado, "That when the land in the said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be and the same are hereby reserved for the purpose of being applied to schools in the States hereafter to be erected out of the same," said: "It is evident from the very terms of the grant that Congress intended to grant to Colorado (and the same is true of other States) two sections for every township in the State, to be taken of the sixteenth and thirty-sixth sections, where such sections at the time of survey have not been sold or otherwise disposed of; and where at the time of survey such sections have been sold or disposed of, then other lands equivalent thereto and as contiguous as may be are granted to said State in lieu of the sixteenth and thirty-sixth sections." In Gregg v. State of Colorado, 15 L. D., 151, Secretary Nobel said of the Heydenfeldt case: "The principle distinctly announced by the court is that, until the status of the land is actually fixed by survey, as shown by the township plat, so that the grant may attach to the specific section, the

Government has the absolute power to dispose of it as a part of the public domain, and to provide for its disposal in any manner that may promote the public interest." In State of

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Oregon, 41 L. D., 259, concerning section 2275 of the Revised Statutes, as amended by the act of February 28, 1891, it was said: "It is clear from this section that title does not pass to the State until survey, nor to reserved lands until the reservation is vacated and the land restored to the public domain. Until such event the right of the State is merely expectant, or inchoate, and though it may stand upon such expectant right and await release of the land from reservation and its restoration to the public domain, it has no title it can convey or right it can assign." In Boise National Forest, 38 L. D., 224, construing the act of July 3, 1890, providing for the admission of Idaho into the Union, "that sections numbered sixteen and thirty-six in every township of said State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools," it was held that the withdrawal of certain lands upon the application of the governor of Idaho for a survey of the lands under the act of August 18, 1894, did not operate to remove them from the jurisdiction of the United States by reason of the provision contained in the President's proclamation excepting from the effect thereof all lands which might have been, prior to the date of the proclamation, embraced in any legal entry or covered by any lawful filing duly of record. In State of Florida, 38 L. D. 350, it was said: "This department and the courts have uniformly held that the grant of school sections in place does not attach to any particular tract of land until the same is identified by survey. See Heydenfeldt v. Daney Gold and Silver Mining Co. (93 U. S., 634);

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Minnesota v. Hitchcock (185 U. S., 373).

Under the acts for the admission of the States of North Dakota, South Dakota, Montana, and Washington the policy of congressional legislation in regard to the granting of school lands to the States was still more clearly expressed in a provise "that the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not at any time be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in the Indian, military, or other reservations of any character be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to and become a part of the public domain." (25 Stat., 679.)

I submit that the decree should be affirmed.

(Endorsed:) Dissenting opinion. Filed Feb. 2, 1914. (Signed) F. D. Monckton, clerk.

86 United States Circuit Court of Appeals for the Ninth Circuit.

W. J. MORRISON, FINLEY MORRISON, AND SLIGH FURniture Company, a corporation, appellants,

No. 2295.

THE UNITED STATES OF AMERICA, APPELLEE.

Decree, U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the District of Oregon.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Oregon

and was duly submitted.

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On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the judgment of the said District Court in this cause be, and the same is hereby reversed, and that this cause be, and hereby is, remanded to the said District Court with directions to dismiss the bill.

(Endorsed:) Decree, U. S. Circuit Court of Appeals. Filed and entered February 2, 1914. (Signed) F. D. Monckton, clerk.

[Title of court and cause.]

Petition for Appeal from the Circuit Court of Appeals to the Supreme Court of the United States.

Comes now the above-named appellant, the United States of America, and respectfully shows that the above-entitled cause is now pending in the United States Circuit Court of Appeals for the Ninth Circuit and that a judgment and decree has therein been rendered on the 2nd day of February, 1914, reversing the judgment and decree of the Circuit Court of the United States for the District of Oregon, and said cause remanded to said circuit court with directions to dismiss the bill of appellant; and that the matter in controversy in said suit exceeds in value one thousand dollars, besides costs; and that this cause is one in which the United States Circuit Court of Appeals for the Ninth Circuit has not final jurisdiction, and that it is a proper cause to be reviewed by the Supreme Court of the United States on appeal.

Wherefore, the said appellant prays that an appeal be allowed it in the above-entitled cause, directing the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the error

complained of in said assignment of errors herewith filed by the said appellant, may be reviewed, and if error be found corrected according to the laws and customs of the United States.

(Signed) C. L. Reames, United States Attorney for Oregon.

(Signed) E. A. Johnson, Assistant United States Attorney for Oregon.

(Endorsed:) Filed Mar. 30, 1914. (Signed) F. D. Monckton, clerk.

89 [Title of court and cause.]

Assignment of errors on appeal from the Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the United States.

The appellant in the above entitled cause in connection with its petition for appeal herein presents and files therewith this, its assignment of errors, as to which matters and things it says that the judgment entered herein on the 2nd day of February, 1914, reversing the judgment and decree of the United States Circuit Court for the District of Oregon, and remanding said cause to said court with directions to dismiss the bill of appellant, is erroneous, and appellant assigns errors thereto and therein, as follows:

## I.

That there is error in the judgment of the above-entitled court in holding that the legislation of Congress therein referred to, and concerning the grant by the United States to the State of Oregon of lands in aid of schools, amounted to a congressional grant to that State of all the sixteenth and thirty-sixth sections therein for school purposes, to which lands no right of any third party attached prior to the proper identification of such sections by survey.

## II.

That there is error in the judgment of the above-entitled court in holding that the survey of the lands involved, when made and finally approved, related back to the time of the inception of the proceeding, thereby perfecting the grant of said lands to the State of Oregon theretofore promised to be granted when said State was a Territory and confirmed to it when said State accepted the proposals to it made by Congress in the enabling act of February 14, 1859.

### III.

That there is error in the judgment of the above-entitled court in holding that the lands involved in said cause were surveyed on date of December 16, 1905, or on any date prior to date of November 16, 1907.

### IV.

That there is error in the judgment of the above-entitled court in not holding that the lands involved in said cause were unsurveyed, until the survey made thereof was approved and accepted by the Commissioner of the General Land Office and the Secretary of the Interior Department of the United States and the triplicate plat of said survey filed in the proper local land office on date of November 16, 1907.

## V.

That there is error in the judgment of the above-entitled court in not holding that the land involved in said cause at all times was, and now is, owned by, and the property of, the United States of America.

## 91 VI.

That there is error in the judgment of the above-entitled court in not holding that the prayer of appellant's bill should be granted, and decree and judgment rendered quieting appellant's title to the lands in said bill described as against all claims of right or interest of appellees herein.

### VII.

That there is error in the judgment of the above-entitled court in holding that the bill of appellant herein should be dismissed.

### VIII.

That there is error in the judgment of the above-entitled court in directing the dismissal of the bill of appellant.

Wherefore appellant prays that said decree and judgment may be reversed, and that appellant have an adjudication and judgment and decree in its favor as herein specified, and as in its said bill of complaint prayed.

(Signed) C. L. Reams, United States Attorney for Oregon. (Signed) E. A. Johnson, Assistant United States Attorney for Oregon, (Endorsed:) Assignment of errors on appeal from the Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the United States. Filed Mar. 30, 1914. (Signed) F. D. Monckton, clerk, U. S. Circuit Court of Appeals for the Ninth Circuit.

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[Title of court and cause.]

[Affidavit as to amount in controversy.]

United States of America,
District of Oregon, County of Multnomah, 88:

I, Wm. B. Osborne, being first duly sworn, do on oath depose and say that I am forest examiner of the Oregon National Forest and that I have at various times and for considerable periods, personally been upon and am familiar with the lands, the title to and ownership of which is involved in the above entitled suit, and know the value thereof; that the said lands so involved in said suit are of a total acreage of five hundred and sixty (560) acres, embracing all of section 16, township 3 south, range 6 east Willamette meridian, State of Oregon, with the exception of 80 acres of said section; that the greater portion of said lands are heavily timbered, and that by reason thereof, the said lands greatly exceed in value the sum of one thousand (\$1,000) dollars; that said lands in their present condition are easily worth the sum of ten thousand (\$10,000) dollars, which is in my judgment a thoroughly conservative cash value therefor; that I am familiar with the values of timber and timber-bearing and nontimbered lands in the State of Oregon and particularly in the immediate locality of the lands in question, and that I make this affidavit from an actual knowledge of the premises, based upon

conservative, comparative values of similar lands in the immediate locality thereof; that the ownership of the said lands and all thereof is in controversy in this suit and is dependant upon the final judgment and decree which shall be rendered therein, and that the values thereof and the amount so in controversy, exceeds the sum of one thousand (\$1,000) dollars exclusive of interest and costs.

(Signed) WM. B. OSBORNE.

Subscribed in my presence and sworn to before me by the abovenamed Wm. B. Osborne, this 25th day of March, 1914.

[SEAL.] (Signed) EVERETT A. JOHNSON,
Notary Public for Oregon.

My commission expires August 14, 1914. (Endorsed:) Filed Mar. 30, 1914. (Signed) F. D. Monckton, clerk

## [Title of court and cause.]

## Stipulation as to amount in controversy.

It is hereby stipulated by and between the appellant above named by E. A. Johnson, assistant United States attorney, and the above named appellees by R. Sleight of solicitors and counsel for said appellees, that the amount in controversy in the above entitled cause is in excess of the sum and value of one thousand dollars besides interest and costs and is of the reasonable value and amount of the sum of \$5000.00 or over.

Dated at Portland, Oregon, this 26th day of March, 1914.

(Signed) E. A. Johnson,

Assistant United States Attorney for Oregon.
(Signed) R. Sleight.

Of Solicitors and Counsel for Appellees. (Endorsed:) Filed Mar. 30, 1914. (Signed) F. D. Monckton, elerk.

95 [Title of court and cause.]

Order allowing appeal from the Circuit Court of Appeals for the Ninth Circuit, to the Supreme Court of the United States.

Now on this 25th day of March, 1914,

It is hereby ordered that the appeal in the above entitled cause to the Supreme Court of the United States as petitioned for by the United States of America, be and is hereby allowed as prayed.

(Signed) WM. B. GILBERT,

United States Circuit Judge for the Ninth Circuit. (Endorsed:) Filed Mar. 30, 1914. (Signed) F. D. Monckton, clerk.

96 [Title of court and cause.]

To the clerk of the said court:

Sir: Please make and issue a certified transcript of the record on appeal to the Supreme Court of the United States in the above entitled cause, consisting of the following:

1. Copy of printed transcript of record on which the above entitled cause was heard in the said Circuit Court of Appeals, to which will be added a typewritten copy of the following entitled proceedings that were had, and of the papers that were filed in said Circuit Court of Appeals, viz:

2. Order of submission, entered September 15, 1913,

3. Order directing filing of opinions and filing and recording of decree; entered Feb. 2, 1914.

4. Opinion and dissenting opinion filed Feb. 2, 1914.

5. Decree filed and entered Feb. 2, 1914.

6. Petition for appeal to Supreme Court of the United States, assignment of errors on appeal to Supreme Court of the United States, affidavit as to amount in controversy; stipulations as to amount in controversy; order allowing appeal to the Supreme Court of the United States, filed March 30, 1914.

7. Præcipe for certified transcript of transcript of record on appeal to Supreme Court of the United States, filed

8. Certificate of clerk of United States Circuit Court of Appeals to transcript of record; and

9. Original citation on appeal to Supreme Court of the United

States filed

Omit the title of the court and of the cause from the latter proceedings and papers except the decree, the citation on appeal, and the clerk's certificate, and in lieu of said omitted titles insert the following: "(Title of court and cause.)"

Omit all endorsements on the latter proceedings and papers, excepting that portion thereof showing the date of filing and the admission

or acknowledgment of service.

(Signed) C. L. REAMES, (Signed) E. A. JOHNSON, Counsel for Appellee. and

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UNITED STATES OF AMERICA,

District of Oregon, 88:

Due and proper service of the within præcipe, by receipt by me, at Portland, in said State and district, this 3rd day of April, 1914, of a copy thereof certified to by E. A. Johnson, Assistant United States Attorney for the District of Oregon, is admitted.

(Signed) R. Sleight, E.

Of Solicitors and Counsel for W. J. Morrison, Finley Morrison, and The Sligh Furniture Company, a corporation, Appellees.

(Endorsed:) Filed Apr. 6, 1914. (Signed) F. D. Monckton, clerk.

98 United States Circuit Court of Appeals for the Ninth Circuit.

W. J. Morrison, et al., appellants,
vs.

The United States of America, appellee.

Certificate of clerk U. S. Circuit Court of Appeals to transcript of record upon appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing ninety-seven (97) pages, numbered from and including one (1) to

and including ninety-seven (97), to be a true copy of the complete record made pursuant to the pracipe filed by counsel for the appellee on the 6th day of April, A. D. 1914, under rule 8 of the Supreme Court of the United States, in the above-entitled case, including the assignment of errors on appeal to the Supreme Court of the United States, and of all proceedings had, and of all papers, including the opinion and dissenting opinion, filed in the said Circuit Court of Appeals in the above-entitled case as the originals thereof, remain on file and appear of record in my office, and that the same together constitute the transcript of record on appeal to the Supreme Court of the United States in the above-entitled cause as made and certified pursuant to the said præcipe, and excluding Government's original Exhibits "A" and "B," which, pursuant to the practice, were returned to the court below on the eleventh day of March, A. D. 1914, upon the issuance of the mandate under rule 32 of the Rules of Practice of said Circuit Court of Appeals.

Attest my hand and the seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this seventeenth day of April, A. D.

1914. SEAL.

F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth 99 Circuit.

UNITED STATES OF AMERICA, APPELLANT,

No. 2295.

W. J. Morrison, Finley Morrison, and the Sligh Furniture Company, a corporation, appellees.

Citation to appelle's on appeal from the Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the United States.

THE UNITED STATES OF AMERICA:

To W. J. Morrison, Finley Morrison, and the Sligh Furniture Com-

pany, a corporation:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, in the District of Columbia, sixty days after the date of this citation, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein the United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Wm. B. Gilbert, judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 3rd day of April, 1914.

WM. B. Gilbert, Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

100 United States of America, District of Oregon, 88:

Due and proper service of the within citation by receipt by me at Portland, in said State and district, this 3rd day of April, 1914, of a copy thereof, certified to by E. A. Johnson, assistant United States attorney for the District of Oregon, together with a similarly certified copy of petition of appellant for appeal, order allowing appeal, affidavit as to amount in controversy, assignment of errors, and praecipe for certified transcript on appeal is admitted.

R. Sleight, E.

Of Solicitors and Counsel for W. J. Morrison, Finley Morrison, and The Sligh Furniture Company, a Corporation, Appellees.

101 In the District Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA, PLAINTIFF, 28.
FINLEY MORRISON, ET AL., DEFENDANTS.

# Stipulation.

It is hereby stipulated between counsel for respective parties above named, that an order having been made in this cause on June 26, 1913, providing that Government Exhibits A and B, which were introduced in evidence on the trial herein, were of such character as to require inspection by the appellate court upon the appeal heretofore taken to the Circuit Court of Appeals, and the above-named plaintiff having appealed to the Supreme Court of the United States from the decre' of the Circuit Court of Appeals for the 9th Circuit, entered herein, and the clerk of the last-named court having transmitted said Government Exhibits A and B to this court with the mandate from the Circuit Court of Appeals, and said exhibits being of such character as to require inspection by the United States Supreme Court upon the said appeal to such court, this court may, upon this stipulation, make an order that the clerk of this court transmit said Government Exhibits A and B to the Supreme Court of the United States, with the transcript upon the appeal taken by the above-named plaintiff, to the Supreme Court of the United States from the said decree of the Circuit Court of Appeals.

E. A. Johnson,

Assistant U. S. Attorney and of Attorneys for Plaintiff.
R. Sleight & Mark Norris,
Attorneys for Defendants, Finley and W. J.
Morrison and Sleigh Furniture Company.

Dated April 24, 1914. Filed 4/24/14.

102 In the District Court of the United States for the District of Oregon.

THE UNITED STATES OF AMERICA, PLAINTIFF, vs.
FINLEY MORRISON ET AL., DEFENDANTS.

## Order.

Upon stipulation this day made and filed.

It is ordered that Government Exhibits A and B introduced in evidence in the trial of this cause and transmitted to this court by the clerk of the Circuit Court of Appeals for the 9th Circuit are of such character as to require inspection by the Appellate Court, and that the clerk of this court transmit said exhibits, duly certified, to the clerk of the United States Supreme Court, with the transcript upon appeal herein.

CHAS. E. WOLVERTON, Judge.

Dated April 24, 1914. Filed 4/24/14.

103 (Indorsed:) Docketed. No. 2295. In the U. S. Circuit Court of Appeals of the United States for the Ninth Circuit. United States of America, appellant, vs. W. J. Morrison et al., appellees. Citation. Filed Apr. 6, 1914. F. D. Monckton, clerk U. S.

Circuit Court of Appeals for the Ninth Circuit.

(Indorsement on cover:) File No. 24,193, U. S. Circuit Court Appeals, 9th Circuit. Term No. 463. The United States, appellant, vs. W. J. Morrison, Finley Morrison, and The Sligh Furniture Company. Filed May 1st, 1914. File No. 24,193. Office of the clerk. Supreme Court U. S. Received May 1, 1914.